Supreme Court, U. S.
FILED
AUG 7 1975
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-202

FERGUSON REORGANIZED SCHOOL DISTRICT R-2 (FERGUSON-FLORISSANT SCHOOL DISTRICT and WARREN M. BROWN, Superintendent,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

NORMAN C. PARKER
319 North Fourth Street
St. Louis, Missouri 63102
Attorney for Petitioners, Ferguson Reorganized School District R-2 and Warren M. Brown, Superintendent

Dated: August 6, 1975

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

TABLE OF CONTENTS

	Page
Opinions and Orders Below	1
Jurisdiction	2
Questions Presented	2
Constitutional and Statutory Provisions Involved	3
Statement of the Case	4
Reasons for Granting the Writ	8
I. The Ruling of the Eighth Circuit Court of Appeals and the District Court That Defendant Ferguson-Florissant School District Has Committed Acts Resulting in De Jure Segregation of Pupils Between the Defendant Kinloch School District and Other School Districts in St. Louis County Is Without Basis in Law or Fact and Is in Conflict With the Decisions of This Court	8
II. The Plan of Desegregation Ordered by the Court of Appeals Violates the Tenth and Fourteenth Amendments to the United States Constitution in That It Ignores Missouri Constitution and Laws Establishing Autonomous School Districts by Abolishing School District Boundaries, Setting a Tax Rate and Naming Board Members and Presents a Question of Federal Law That Should Be Definitely Decided by This Court	15
Conclusion	16

CITATIONS

Cases

Bradley v. School Board of the City of Richmond, Va., 462 F. 2d 1058 (CA 4 1972), affirmed by equally divided Court, 412 U. S. 92 (1973) 14

Brown v. Board of Education of Topeka, 347 S. W. 483 (1954) 13

Haney v. County Board of Education of Sevier County, Ark., 410 F. 2d 920 (CA 8 1969), 429 F. 2d 364 (1969) 16

Keyes v. School District No. 1, Denver, Colorado, 413 U. S. 189 (1973) 13

Lewis County C-1 School District v. Normile, 431 S. W. 2d 118 (Mo. Sup. Ct. 1968) 15

Milliken v. Bradley, 418 U. S. 717, 94 S. Ct. 3112 (1974) 8, 14, 15

Soria v. Oxnard School District Board of Trustees, 488 F. 2d 579 (CA 9 1973) 12-13

Swann v. Charlotte-Mecklenburg Board of Education, 402 U. S. 1 (1971) 10, 14

Statutes and Constitutions

R. S. Mo. 1969:
Chapters 161-177 ..... 4, 11
§ 161.029 11
§ 162.161 ..... 11, 13
§ 162.181 11

§ 162.291 16
§ 162.311 11
§ 162.441 ..... 13, 15
§ 164.021 11
§ 164.121 11
§ 165.011 11
§ 168.102 11
§ 171.011 11
§ 177.041 11

Missouri Constitution:
Article X §§ 11(b) and 11(c) 15
Article X § 3 15

United States Constitution:
Tenth Amendment 3, 5, 16
Fourteenth Amendment 4, 5

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. .....

FERGUSON REORGANIZED SCHOOL DISTRICT R-2 (FERGUSON-FLORISSANT SCHOOL DISTRICT and WARREN M. BROWN, Superintendent,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

Petitioners, Ferguson Reorganized School District R-2 (Ferguson-Florissant School District R-2) and Warren M. Brown, Superintendent of the District pray that a Writ of Certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered May 14, 1975.

OPINIONS AND ORDERS BELOW

The opinion of the Court of Appeals, not yet reported, appears in the Joint Appendix beginning at page 1. Hereafter

references to the Joint Appendix are indicated by page numbers in parentheses.

The District Court's Findings of Facts, Conclusions of Law and Order of August 27, 1973 (16), 363 F. Supp. 739, finding, inter alia, that Kinloch School District was unconstitutionally established and ordering the presentation of a plan to desegregate it.

The District Court's Findings of Facts, Conclusions of Law and Judgment of January 9, 1975 (36 et seq.), 388 F. Supp. 1058, ordering the annexation of the Berkeley and Kinloch districts by the Ferguson-Florissant School District.

The District Court's Order of June 7, 1975 (46), modifying the annexation judgment pursuant to the decision and mandate of the Court of Appeals.

JURISDICTION

The judgment of the Court of Appeals was entered May 14, 1975. This petition for certiorari was filed within 90 days thereafter. This Court's jurisdiction is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

I

Whether or not Ferguson-Florissant School District, which is locally autonomous, can be merged with an adjacent school district, Kinloch School District No. 18, which was in 1937, by action entirely within the district, divided into two districts, one black and one white, when the boundaries of Ferguson-Florissant were not racially established and when the only real reason for the merger is that Ferguson-Florissant provides desirable racial mix.

II

Whether or not the conduct on the part of St. Louis County Board of Education or the State of Missouri Board of Education, in not submitting to voters in involved districts proposed reorganizations or mergers that would merge the Kinloch School District, i.e., the Kinloch portion of District No. 18, with one or more other districts, constitutes state action that substantially caused inter-district segregation imputable to Ferguson-Florissant.

III

Whether or not the District Court can restructure Missouri's internal government of school districts by abolishing the locally established school district line of the Ferguson-Florissant School District, by setting the tax rate and by designating membership on an elective board of education without regard to the Missouri Constitution and laws when there is no showing that the boundaries of the Ferguson-Florissant School District were established or maintained by invidious discrimination.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution:

Amendments, Article X—"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Amendments, Article XIV, Section 1—"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Revised Statutes of Missouri, 1969:

Chapters 162 to 177, inclusive (too voluminous to reproduce here) which contain all the statutes pertaining to public schools. §§ 162.101-162.451 pertaining to six director districts are set forth in Joint Appendix beginning at p. 112.

STATEMENT OF THE CASE

This petition is by the Ferguson Reorganized School District, R-2, more usually referred to as the Ferguson-Florissant School District, to review the decision of the Court of Appeals for the Eighth Circuit affirming a decision of the District Court in a desegregation case directing this District to annex the Berkeley and Kinloch districts. Throughout the proceedings in the two lower courts Ferguson-Florissant has maintained the position that it is not properly included in an inter-district remedy for violations that occurred beyond its boundaries when under the Missouri law local school districts are autonomous.

The Ferguson-Florissant School District, Kinloch School District and Berkeley School District are three of the twenty-six public school districts in St. Louis County, Missouri. Population of St. Louis County as of the 1970 census was just under 1,000,000 persons. The area of St. Louis County is approximately 464 square miles.

At the commencement of the 1974-1975 school year the total pupil enrollment in the Ferguson-Florissant District was 16,556 of which 680 (4%) were black, Berkeley had 4243 enrolled of which 1725 (40%) were black, and Kinloch had 979, all of whom were black. The Ferguson-Florissant District is 16 square miles in area, the Kinloch one square mile and the Berkeley 10.8 square miles. The relative locations of the three districts with respect to themselves and to all districts in St. Louis County are shown on the maps at pages 150 and 151 of the Joint Appendix.

In September 1971 the United States commenced this action by filing its complaint based upon section 407 of the Civil Rights Act of 1964, 42 U.S.C. § 2000C-6 and the Fourteenth Amendment to the U. S. Constitution. It was not at anytime thereafter amended or supplemented.

The complaint (51 et seq.) states that the Ferguson-Florissant School District and its Superintendent "are joined . . . because the relief sought may affect their interests," and that it is "located adjacent to the Kinloch School District." (53 and 54) It charges that the Kinloch School District, "was created by the defendant State of Missouri, Missouri State Board of Education and St. Louis County Board of Education in 1938 as a School District designed to be attended exclusively by black students", and they have "continued to maintain" it "as an all black district." The relief sought was to enjoin all the defendants from "discriminating against black children attending the public schools in the Kinloch School District and require them to take affirmative action to correct the effects of past discrimination based on race." (55) Answers filed on behalf of defendants denied any acts of segregation and invoked, inter alia, the Tenth Amendment to the U. S. Constitution. (57-70)

After trial in August of 1972 the district court handed down its decision August 27, 1973 enjoining all defendants "from

discriminating against any person because of race, color, religion, or national origin in the operation of the public schools of St. Louis County, Missouri" and ordered the State Board of Education and the County Board of Education "to develop and file . . . a plan which will disestablish the racially dual system of school districts in St. Louis County and eliminate the continuing effects of past discrimination against, and denial of equal educational opportunities to, students in the Kinloch District." (16)

The findings of fact and conclusions of law which the district court entered to support its order of August 27, 1973 contain findings concerning the creation of the defendant Kinloch District in 1937. Prior to 1937 there existed in St. Louis County Kinloch School District No. 18 which encompassed essentially what is now the Kinloch District and the Berkeley District. In 1937 pursuant to a statute R.S. Mo. 1929, Section 9325[1] a portion of District No. 18 seceded by organizing and establishing the Berkeley District to be coterminous with the newly organized City of Berkeley thereby leaving the Kinloch district as presently constituted. This action left virtually all the black residents in Kinloch and the white in Berkeley. What remained of Kinloch No. 18 had 872 black and 6 white pupils; Berkeley had 648 white and 16 black. (21) The district court found this separation within the old District 18 to have been racially motivated and therefore unconstitutional.

The findings of 1973 concerning the Ferguson-Florissant School District are limited to a small number of categories which the Court held sufficient to involve that District. The Court found that the Ferguson-Florissant District is adjacent to Kinloch and that when a merger of Kinloch, Berkeley, Ferguson and seven other districts was proposed in 1949 it was defeated

[1] ". . . any incorporated city . . . which is divided by a school district boundary line . . . shall have the right to organize as a separate town or city school district. . . ."

by referendum. (25) These are the only findings that can be directly attributed to the Ferguson-Florissant District. The others are attributed to the State of Missouri directly or through the State Board of Education or the St. Louis County Board of Education. These include, 1) Missouri State Law required segregation prior to 1954; 2) The County and State defendants have proposed reorganization plans but have not included Kinloch because it was all black; 3) Various publications and references by the State have recognized Kinloch as an all black district; and 4) The State has created and maintained Kinloch.

In its findings of fact of January 9, 1975, to support the order of the same date approving the plan to merge all the districts, the district court made other findings for drawing the Ferguson-Florissant District within the charges of invidious acts. (36 et seq.) It found ". . . the evidence in this case shows and . . . this Court has previously found, i.e., an arrangement of school districts which has caused substantial segregation and which is both a vestige of the previously imposed dual school system and a continuing effect of racially discriminatory state actions on the part of the defendants in this case". (38) No evidence on which to base these findings was received by the District Court in the January 1975 hearing that preceded its Order of January 9, 1975. In response to the Ferguson-Florissant position that it was not "involved in the creation of the Kinloch District as an all black district" the district Court said, arguendo, that its findings of August 27, 1973 "indicate that each defendant, including the Ferguson-Florissant School District, is, to a substantial degree, responsible for the maintenance of Kinloch as a segregated district." (38) Again, there are no facts stated or found that support this conclusion.

REASONS FOR GRANTING THE WRIT

I

The Ruling of the Eighth Circuit Court of Appeals and the District Court That Defendant Ferguson-Florissant School District Has Committed Acts Resulting in De Jure Segregation of Pupils Between the Defendant Kinloch School District and Other School Districts in St. Louis County Is Without Basis in Law or Fact and Is in Conflict With the Decisions of This Court.

The Petitioner relies strongly upon this Court's recent decision in the Detroit case, *Milliken, et al. v. Bradley et al.*, 418 U.S. 717, 94 S. Ct. 3112 (1974). There the District Court and the Court of Appeals held that the record supported the findings as to constitutional violations by the Detroit Board and the State to authorize a plan of desegregation embracing not only the City of Detroit District but 53 outlying districts. The principles applied by this Court are most applicable to the Kinloch situation. This Court recognized that it addressed "for the first time, the validity of a remedy mandating cross-district or inter-district consolidation to remedy a condition of segregation found to exist in only one district." This Court said:

> "The controlling principle consistently expounded in our holdings is that the scope of the remedy is determined by the nature and extent of the constitutional violation. *Swann*, infra, at 16. Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of inter-district

> segregation. Thus an inter-district remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race. In such circumstances an inter-district remedy would be appropriate to eliminate the inter-district segregation directly caused by the constitutional violation. Conversely, without an inter-district violation and inter-district effect, there is no constitutional wrong calling for an inter-district remedy."

The original wrong occurred in 1937 when the Berkeley portion of the Kinloch School District No. 18 seceded and formed the Berkeley School District leaving the truncated Kinloch School District. That wrong did not extend beyond the boundaries of the original district. It did not cross to Ferguson. The Ferguson District had no part in the action. The geographical boundaries of the Ferguson-Florissant District have been established without regard to racial considerations. This District has, for long prior to this suit, maintained a completely unitary school system.

The Court of Appeals found that the Ferguson-Florissant School District was not involved in the creation of the Kinloch School District:

> "We agree that the record fails to disclose that Ferguson actively participated in the creation of the segregated Kinloch district. Kinloch was created by discriminatory state action and implemented by the establishment of the Berkeley School District in 1937, leaving Kinloch as an all-black school district". (9)

Not having been involved in the "original sin" of 1937 the lower courts turned to subsequent acts, which they say Ferguson-Florissant did, and acts of State and County boards which they impute to Ferguson-Florissant.

The only direct act charged to Ferguson-Florissant is the defeat at the polls of the County Board's 1949 proposal to merge Kinloch, Berkeley, Ferguson and seven other districts. The lower courts draw their conclusion solely from the results of the election.

The record is devoid of any evidence indicating that any public official of Kinloch, Berkeley, Ferguson or the other local school districts opposed, on racial considerations or otherwise the merger of the districts. Nor is there any evidence that racial considerations played any part whatsoever in the outcome of the election. It may well be significant to note that the voting results in each of the districts indicated that the citizens of Berkeley were in favor of the merger, as were the citizens of Kinloch. The electorate of the old Ferguson district, which comprised then but a part of its present territory, were equally divided on the issue. Only the districts to the north, none of which was contiguous to Kinloch, voted against the merger, and for reasons known only to themselves. Absent additional, independent proof to the contrary, no conclusions with respect to the impact of racial considerations may be drawn from the results of the voting, in light of the district-by-district breakdown, and the results of other merger attempts in St. Louis County in 1949. See St. Louis County Exhibit B which tabulates the results of the several reorganization elections of 1949 most of which were defeated. This exhibit is the only evidence upon which the lower courts both have said that the reorganization was defeated for racial reasons.

All other charges of culpability against Ferguson-Florissant are vicarious. They are purported acts of the State, specifically the St. Louis County Board of Education and the State Board of Education:

(1) Missouri state law required segregation prior to 1954. This is true but there is no finding nor evidence that this dual

system has not been dismantled by the school districts throughout the state. It must be remembered that the local school boards in Missouri have exclusive jurisdiction within their districts. The dismantling of dual systems had to be and was done at the local level. The statutes, R.S. Mo. 1969, Chapters 162 to 177 inclusive, govern the establishment and operation of school districts. For instance each district is a separate legal entity that can sue and be sued (§ 162.311); each sets its own tax rates (§ 164.021); each determines whether or not it shall issue general obligation bonds (§ 164.121); each has autonomy in budgeting and financing (§§ 165.011 et seq.); title to all school properties is in each district; each employs its own teachers and other personnel and sets the salaries and other terms of employment (§§ 168.102 et seq.); each board has control over its curriculum; each has the power of eminent domain (§ 177.041); and in general each board "may make all needful rules and regulations for the organization, grading and government in the school district" (§ 171.011). The powers and duties of the County and State Boards are very limited, consisting mostly of statistical accumulation and distribution, making suggestions and cooperating. See §§ 162.181 et seq. and 161.029 et seq.

(2) The County and State "have proposed reorganization plans . . . but have not included Kinloch . . . because it was all black." It does not follow from this that an inter-district remedy involving only Ferguson-Florissant is justified or required. Neither the County nor State Board has the statutory authority to compel mergers. Any reorganization is proposed by the County Board and is approved by vote within the proposed new reorganized district (R.S. Mo. 1969 §§ 162.161 et seq.) Furthermore, the only evidence to support this conclusion was the testimony of a former employee of the Missouri Department of Education that the St. Louis County Board did not propose inclusion of Kinloch in reorganization, "Because they were an all black school district their neighbors they didn't feel would be favorable to this . . ." Mr. Summers could not remember

whether he was told this by the County Board before or after the 1949 election. It stands to reason, however, that such a statement would not have been made **after** the results of that election were tallied, and when the favorable composite vote of Kinloch, Berkeley and Ferguson would be noted. Certainly, if the statement were made, even, we shall assume, as an expression of board policy, prior to the 1949 election, is not whatever constitutional infirmity emanating from the statement rectified by the subsequent inclusion of Kinloch in the reorganization vote? Finally, Mr. Summer's testimony does not indicate that the attitudes expressed to him on that one occasion ever manifested themselves in the board's refusal to include Kinloch in a subsequent merger plan out of racial considerations. By his testimony, he in fact stated the county Board was "favorable" to inclusion of Kinloch, but leery of the chances of the success of the proposal. The statements expressed may well have been political attitudes or forecasts not expressive of board policy or action. Certainly, inclusion of Kinloch in one of the four plans is some evidence of official policy favoring its reorganization. The fact that Kinloch was included in but one of four plans is not conclusive; other districts, which for financial reasons were equally ripe for reorganization, were also excluded from other than one of the four plans submitted to the electorate.

(3) Various publications and references by the State have recognized Kinloch as an all black district. Again, how can this be an offense by Ferguson?

(4) The State has created and maintained Kinloch. This is merely a conclusion with no facts stated to support it. There are none.

None of these so-called findings mandates the crossing of Ferguson-Florissant's boundary lines. Indeed none, nor all taken together, can establish any purpose or intent upon the part of Ferguson-Florissant to segregate. *Soria v. Oxnard*

School District Board of Trustees, 488 F. 2d 579 (C.A. 9, 1973). The reliance of the lower courts on the "inaction" of Ferguson and the state defendants squarely conflicts with this Court's ruling in *Keyes v. School District No. 1 Denver*, 413 U.S. 189, 93 S. Ct. 2686, 2696 (1973):

> "We emphasize that the differentiating factor between *de jure* segregation and so-called *de facto* segregation to which we referred in *Swann* is *purpose* or *intent* to segregate."

There is no finding by the District Court and there is no evidence on which to base a finding that the Ferguson-Florissant District did any "racially discriminatory acts" that "caused racial segregation in" Kinloch. Even if, arguendo, we accept the State's responsibility for the segregated conditions within the Kinloch School District No. 18, it does not follow that an inter-district remedy is constitutionally justified or required. The acts of segregation all occurred within one district, Kinloch School District No. 18. There is no obligation upon Ferguson-Florissant, or for that matter upon any other of the 26 school districts in St. Louis County to correct the segregative condition existing wholly within Kinloch No. 18 any more than it was the obligation of any of the 53 outlying districts to correct the conditions in the City of Detroit.

After *Brown v. Board of Education*, 347 U.S. 483 (1954), the boundary lines between the Berkeley School District and the Kinloch School District became illegal—a nullity. Those districts became obligated to correct the wrong. This could have been done by court action to set aside the 1937 partition, by statutory annexation or by statutory reorganization. See R. S. Mo. 1969, §§ 162.161, 162.441. The remedy was there all the time and it was a local remedy all that time. The failure to do so cannot be imputed to Ferguson-Florissant via the State from Kinloch-Berkeley any more than from Detroit

through the State to the outlying districts. As this court said in *Milliken*, ". . . the remedy is necessarily designed, as all remedies are, to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct." See also *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), and *Bradley v. School Board of Richmond, Va.*, 462 F.2d 1058 (C.A. 4, 1972), aff'd by equally divided Court, 412 U.S. 92 (1973).

In his concurring opinion Mr. Justice Stewart aptly expressed the principles that are justly applicable here:

> "The Court of Appeals, in affirming the decision that an inter-district remedy was necessary, noted that a plan limited to the City of Detroit 'would result in an all black school system immediately surrounded by practically all white suburban school systems, with an overwhelmingly white majority population in the total metropolitan area.' 484 F. 2d 215, 245.
>
> "The courts were in error for the simple reason that the remedy they thought necessary was not commensurate with the constitutional violation found. Within a single school district whose officials have been shown to have engaged in unconstitutional racial segregation, a remedial decree that affects every individual school may be dictated by 'common sense,' see Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189, 203 (1973), and indeed may provide the only effective means to eliminate segregation 'root and branch,' Green v. County School Board, 391 U.S. 430, 437 (1968), and to 'effectuate a transition to a racially nondiscriminatory school system.' Brown v. Board of Education, 349 U.S. 294, 301. See Keyes, supra, 413 U.S., at 198-205. But in this case the Court of Appeals approved the concept of a remedial decree that would go beyond the boundaries of the district where the constitutional violation was found, and include schools and school children in many other school districts that have presumptively been administered in complete accord with the Constitution." *Milliken*, 94 S. Ct., l.c. 3132.

II

The Plan of Desegregation Ordered by the Court of Appeals Violates the Tenth and Fourteenth Amendments to the United States Constitution in That It Ignores Missouri Constitution and Laws Establishing Autonomous School Districts by Abolishing School District Boundaries, Setting a Tax Rate and Naming Board Members and Presents a Question of Federal Law That Should Be Definitely Decided by This Court.

The lower courts approved a plan of merging the three districts by directing the annexation of Kinloch and Berkeley by Ferguson-Florissant as authorized by R.S. Mo. 1969, §§ 162.-441 et seq. This goes far beyond these annexation statutes. It establishes a tax rate of $5.38 per $100 valuation, which is the highest of the three existing rates of $3.80, $4.97 and $5.38.

The Missouri Constitution does not permit the $5.38 tax rate without the approval of the voters in the district. These provisions are part of the structure of the State and are totally unrelated to any racial matters. Mo. Constitution of 1945, Art. X, §§ 11 (b) and 11 (c) provides that the board of education can levy a tax that does not exceed $1.25 on the hundred dollars assessed valuation. A rate in excess of $1.25 but not more than three times that rate requires approval of a majority vote; any rate in excess of $3.75 requires a two-thirds vote. The Missouri Supreme Court in *Lewis County C-1 School District v. Normile*, 431 SW 2d 118, held that in consolidation of four school districts the prior separate tax rates applied as the last ones approved by the voters notwithstanding the constitutional provision that "Taxes . . . shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." Mo. Const., Art. X, § 3.

R.S. Mo. 1969 § 162.291 prescribes the method of electing the directors in six director districts. Each year on the first Tuesday in April two directors are elected for three year terms. The District Court in its Order of January 9, 1975 called off the election in all three districts for April, 1975 but because the Court of Appeals stayed the Order elections were actually held. The Court of Appeals did, however, affirm the District Court's changing the membership of the board of education of the annexing district contrary to the statutes.

It is submitted that the plan violates Amendment X of the U. S. Constitution in that it invades the powers specifically "reserved to the states respectively, or to the people" and violates the Equal Protection Clause of the Fourteenth Amendment. *Haney v. County Board of Education of Sevier County, Ark.*, 429 F. 2d 364, 369 (CA 8, 1970).

The extent of the authority of a district court in a desegregation case to tamper with state constitutional and statutory governmental structure and taxing power among local autonomous school districts is an important question of Federal law which should be definitely decided by this Court.

CONCLUSION

For the foregoing reasons a Writ of Certiorari should issue to review the decision of the Eighth Circuit rendered May 14, 1975.

Respectfully submitted

NORMAN C. PARKER
319 North Fourth Street
St. Louis, Missouri 63102
Attorney for Petitioners

Dated: August 6, 1975

Supreme Court, U. S.
FILED
AUG 9 1975
MICHAEL RODAK, JR., CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

Nos. 75-202

BERKELEY SCHOOL DISTRICT, et al.,
KINLOCH SCHOOL DISTRICT, et al.,
FERGUSON REORGANIZED SCHOOL DISTRICT, R 2, et al.,
Petitioners,

v.

UNITED STATES OF AMERICA, et al.,
Respondents.

JOINT APPENDIX

To Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

ALBERT A. MICHENFELDER, JR.
EDWARD K. FEHLIG
ZIERCHER, HOCKER, TZINBERG,
HUMAN & MICHENFELDER
130 South Bemiston Avenue
Clayton, Missouri 63105
Attorneys for Petitioner, Berkeley School District, et al.

MARVIN S. WOOD
230 South Bemiston Avenue
Clayton, Missouri 63105
Attorney for Petitioner, Kinloch School District, et al.

NORMAN C. PARKER
319 North Fourth Street
St. Louis, Missouri 63102
Attorney for Petitioner, Ferguson Reorganized School District R 2, et al.

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

Nos. .....

BERKELEY SCHOOL DISTRICT, et al.,
KINLOCH SCHOOL DISTRICT, et al.,
FERGUSON REORGANIZED SCHOOL DISTRICT, R 2, et al.,
Petitioners,

v.

UNITED STATES OF AMERICA, et al.,
Respondents.

JOINT APPENDIX

To Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

INDEX

	Page
Opinion of United States Court of Appeals for the Eighth Circuit	1
Order and Opinion of United States District Court, Eastern District of Missouri, Eastern Division, August 27, 1973.	16
Opinion of United States District Court, Eastern District of Missouri, Eastern Division, January 9, 1975	36
Order of United States District Court dated January 24, 1975	44
Order of United States District Court dated June 7, 1975	46

Order of United States District Court dated June 23, 1975 49

Complaint 51

Separate answer of defendants Ferguson-Florissant School District and Warren M. Brown to complaint 57

Amended answer of defendants Kinloch School District and Arthur C. Shropshire 61

Separate answer of defendants Berkeley School District and Jack E. Bell 63

Answer of defendants, State of Missouri, Missouri State Board of Education, its members, and Arthur L. Mallory, Commissioner of Education 67

Answer of defendants George W. Vossbrink, Superintendent, St. Louis County Board of Education, Fred R. Small, President, Robert S. Weinstock, Quinton C. Keller, Paul A. Leupold, Glen A. Sweet, and Clarence J. Wohlwend, Members of the St. Louis County Board of Education 70

Court-ordered Three-District Annexation Plan 72

Ferguson-Kinloch Plan 95

Kinloch-Berkeley Plan 101

42 U.S.C. § 2000c(6) 105

20 U.S.C. §§ 1751, 1752, 1753, 1754, 1755, 1756, 1757. 107

Constitution of Missouri, Article X, Sections 11(b), 11(c).. 110

Missouri Revised Statutes, §§ 162.101-162.451 112

Letter (p. 1), March 12, 1974, re State aid from school district combinations 134

St. Louis County Exhibit B showing results of 1949 School District reorganization referendum 136

Map of all St. Louis County School Districts 150

Map of 3 Districts identifying schools 151

Map of 3 Districts showing racial composition of schools under State Plan (Berkeley Exhibit O-22) 152

Chart showing projected and actual racial change in Berkeley's enrollment since 1967 153

United States Court of Appeals
for the Eighth Circuit

No. 75-1051

No. 75-1064

No. 75-1073

United States of America,
Plaintiff-Appellee,

v.

State of Missouri, et al.,
Defendants,

Berkeley School District, et al.,
Defendants-Appellants,

Kinloch School District, et al.,
Defendants-Appellants,

Ferguson Reorganized School District R II, et al.,
Defendants-Appellants.

Appeal from the United States District Court for the Eastern District of Missouri.

Submitted: April 18, 1975

Filed: May 14, 1975

Before Gibson, Chief Judge, Heaney, Bright, Ross, Stephenson, Webster and Henley, Circuit Judges, en banc*

Stephenson, Circuit Judge

---

* Judge Lay did not participate in the above opinion.

Three adjoining school districts appeal from an order of the United States District Court[1] directing that two of them, Berkeley and Kinloch, be annexed to the third, Ferguson-Florissant School District. The purpose of the consolidation is to achieve a meaningful desegregation of Kinloch, a racially segregated and inadequately funded school district which has been established and maintained by state action in violation of the equal protection clause. The district court's findings and conclusions are reported at 363 F. Supp. 739 (E.D. Mo. 1973). The final desegregation plan and orders implementing the same have been reported at 388 F. Supp. 1058 (E.D. Mo. 1975). We affirm the general desegregation (annexation) plan with some modification of the maximum school tax rate set by the district court.

The detailed findings set out in the district court's published opinions will not be repeated beyond that essential to the disposition of the issues raised on appeal.

Background

Prior to 1937 the present Kinloch district and most of the present Berkeley district were one school district known as Kinloch School District No. 18. The schools were then segregated in accordance with Missouri law; one high school and one elementary school were operated for white children, and one elementary school was operated for black children. Subsequently, Kinloch No. 18 was split into two districts, Berkeley district being white and the new Kinloch black. This was done despite the strong opposition of the new Kinloch district.

The trial court found that as a direct consequence of the creation and maintenance of Kinloch as a small, all-black school district, educational opportunities provided were markedly in-

[1] The Honorable James H. Meredith, Chief Judge, Eastern District of Missouri.

ferior to the opportunities offered in the adjoining Berkeley and Ferguson districts, as well as those offered in most other school districts in St. Louis County. For example, (1) in 1970-71 Kinloch had the lowest assessed valuation per pupil in average daily attendance (ADA) of any school district in St. Louis County (Kinloch's assessed valuation was one-third of Ferguson's and one-sixth of Berkeley's); (2) testimony indicated that Kinloch's buildings and equipment were markedly inferior to the buildings and equipment in the other two districts; (3) the number of library books available to the students in Kinloch was significantly lower; (4) average salaries of teachers in Kinloch were considerably lower; (5) a higher faculty turnover rate and a lower percentage of teachers with master's degrees existed as compared to the other two districts; this has had a significant effect on the quality of the educational program offered in Kinloch; and (6) Kinloch's high school students have a more limited choice of curricula.

The Missouri Department of Education recognized the differences among the districts by its classification system. Kinloch is classified as AA, while both of the other districts are classified as AAA, the highest rating. In St. Louis County only two other districts have less than a AAA rating. The educational deficiencies of the Kinloch district have been longstanding and have been frequently brought to the attention of county and state officials.

The district court further found that on numerous occasions the county and state defendants have proposed reorganization plans for the school districts in St. Louis County but have not included Kinloch in such plans because it was all-black and the officials believed that the voters of surrounding school districts would reject consolidation with Kinloch for that reason. On one occasion (in 1949) when consolidation of Kinloch with Berkeley, Ferguson and other districts was recommended, the reorganization proposal was defeated by referendum.

The court concluded that

> • • • the cumulative effect of the actions of the state and local defendants has been the creation, operation, support, and general supervision by the state of Missouri of a small school district which is unconstitutionally segregated and whose students are denied an equal educational opportunity (citations omitted).

363 F. Supp. at 749.

The district court ordered the state and other defendants "to develop and implement a plan which will 'achieve the greatest possible degree of actual desegregation, taking into account the practicalities of [the] situation.'" 363 F. Supp. at 750.

Thereafter the state and St. Louis County submitted a plan which proposed consolidation of the Berkeley, Kinloch and Ferguson districts. Numerous settlement conferences were conducted in an effort to encourage the local districts to agree on a suitable plan. These efforts were unsuccessful. In October 1974 the court directed the State Board of Education to submit an updated plan.

> This plan shall envision the annexation by Ferguson-Florissant School District of the Kinloch and Berkeley Districts. In view of the current inflation and financial condition of the country, no new buildings shall be built and busing of students shall be at a minimum.

Orders were also entered permitting the local districts to prepare and file proposed plans which contemplated, in the alternative, consolidation of Berkeley and Kinloch or Kinloch and Ferguson. After a hearing on the various proposals, the court entered a judgment requiring implementation of the three-district plan, now before us, which provides for the annexation of Berkeley and Kinloch to Ferguson.

Contentions

In this appeal the three appellant school districts agree that Kinloch should be desegregated but differ as to the manner in which this is to be achieved. Berkeley contends the better solution is to annex Kinloch to Ferguson, whereas Ferguson and Kinloch argue that the best plan is to annex Kinloch to Berkeley. They all disapprove of the three-district plan.

Berkeley contends it should not be included in the plan to desegregate Kinloch for the reasons that: (1) The facts do not support a finding that the formation of Berkeley in 1937 is the cause of existing segregation in Kinloch; (2) the inclusion of Berkeley in the plan will not accomplish the desegregation of Kinloch; (3) Berkeley has become a unitary system of education and should not be included in any desegregation plan; and (4) the plan will impose an excessive burden on the black residents of Berkeley; Berkeley is now maintaining an effective, integrated school system offering quality education to black and white pupils alike on a tax rate of $3.80 per hundred dollars assessed valuation, whereas the court-ordered plan contemplates a tax rate of $6.03 upon all residents of the new consolidated district; (5) the court erred in not adopting the Ferguson-Kinloch plan because of Ferguson's action by referendum in rejecting the 1949 plan proposed by the county board, which included Kinloch, whereas in 1951 Ferguson, Florissant and St. Ferdinand School Districts reorganized and formed Ferguson; (6) the Ferguson-Kinloch plan will accomplish the desegregation of Kinloch while the inclusion of Berkeley will not; and (7) the Ferguson-Kinloch plan is economically, administratively and educationally more feasible than the three-district plan.

Kinloch contends that it was unconstitutionally created, preserved and maintained and that its children have been denied equal educational opportunities. This is not seriously disputed.

It further argues that legally and equitably the remedy should be consolidation of Kinloch and Berkeley or the reestablishment of the old Kinloch School District No. 18. The thrust of its argument is that the present Kinloch district was created not by state, county, or other action but by the predecessors of the present Berkeley School District and that, even assuming that the state of Missouri is guilty of some segregative or discriminatory act, its guilt or liability cannot be attributed to the Ferguson district, which at the most is guilty of inaction. *Milliken v. Bradley*, 418 U.S. 717 (1974).

Ferguson agrees with Kinloch that no constitutional violation on the part of Ferguson has been found or established and, therefore, it should not be included in the desegregation plan. *Milliken, supra*. It further contends that the plan violates the Tenth and Fourteenth Amendments to the United States Constitution in that it ignores the Missouri Constitution and laws establishing autonomous school districts where directors are elected by the voters and tax rates are set by the voters. The three-district plan ordered by the court provided that two seats on the Ferguson board were declared vacant and were to be filled by one member from the boards of the annexed districts to be selected by them. As previously indicated, the court also ordered that the 1975 school tax rate would be uniform throughout the new district and was fixed at a maximum of $6.03.

Merits

This school desegregation action was commenced in September 1971 by the United States pursuant to Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6, and the Fourteenth Amendment. The complaint charged that the defendants had created and maintained the Kinloch District as an all-black school district, denying equal opportunity to its students and thereby denying them equal protection of the law. After a

hearing the district court made the findings previously summarized herein and ordered the state and other defendants to develop and implement a plan to achieve desegregation. During the next 16 months numerous plans were submitted and efforts made to find a solution acceptable to all concerned. Failing in this, the court, as previously indicated, conducted a formal hearing on the various plans and entered the judgment providing for the three-district annexation now before us. We stayed implementation of the plan and directed that this appeal be expedited and submitted to this court en banc.

We have summarized the positions of the appealing school districts and enumerated the substance of their various objections. It is immediately apparent that no one seriously questions the district court's finding that Kinloch was racially segregated by discriminatory state action[2] and its school facilities and educational programs are "markedly inferior to the opportunities offered in the adjoining Ferguson and Berkeley districts, as well as those offered in most other school districts in St. Louis County." 363 F. Supp. at 743. The dispute erupts over the district court's solution to the problem.

After considering the numerous plans submitted and the evidence offered in connection therewith, the district court found that the Revised Plan prepared and submitted by the state and county boards of education best achieved the desired goals.

Ferguson vigorously protests its inclusion in the desegregation plan because it claims it has in no way participated as a separate

---

[2] Berkeley contends that the split of the old Kinloch district was lawful because it preceded *Brown v. Board of Education*, 347 U.S. 483 (1954). This does not remove the state's responsibility to eliminate the *de jure* segregation. *Haney v. County Board of Education of Sevier County, Ark.*, 410 F.2d 920 (8th Cir. 1969). Likewise, Berkeley's contention that had the old Kinloch district remained intact, it would not be a unitary system today does not change the fact that Kinloch was created and maintained as a segregated school system by state action.

school district in action leading to the establishment of Kinloch as a segregated district. *Milliken v. Bradley, supra,* 418 U.S. at 744-45. The complaint does not charge that Ferguson's boundaries were established for racial reasons; nor has there been any finding to that effect. Ferguson claims that the only acts chargeable to this district are chargeable vicariously from actions attributable to the state of Missouri directly or through the State Board of Education.[3]

The district court found that Ferguson shares responsibility with the other defendants in this case for the discriminatory maintenance of the segregated Kinloch district. It took specific note of language in *Milliken, supra,* 418 U.S. at 745, and found it applicable to the situation at hand, stating:

> • • • The [Supreme] Court went on to say that "an inter-district remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race." [417 U.S. at 745.] This latter statement accurately describes what the evidence in this case shows and what this Court has previously found, i.e., an arrangement of school districts which has caused substantial segregation and which is both a vestige of the previously imposed dual school system and a continuing effect of racially discriminatory state actions on the part of the defendants in this case.
>
> • • • • • • • •
>
> • • • Moreover, the evidence set out in this Court's previous findings indicate that each defendant, including the Ferguson-Florissant School District, is, to a substantial degree, responsible for the maintenance of Kinloch as a segregated district. The only justification for the maintenance of Kinloch as a small, segregated and inadequately funded district was the opposition, based on racial consideration, of the surrounding districts to numerous proposals to alter that situation, including the rejection by the electorate of the 1949 reorganization plan. This is an instance where the failure to act or resistance for discriminatory reasons to actions tending to correct segregation amounted to a constitutional wrong. *See United States v. Board of School Commissioners, Indianapolis, Ind.,* 503 F.2d 68, 86 (7th Cir. 1974) [*cert. denied,* 43 U.S.L.W. 3571, April 21, 1975].

388 F. Supp. at 1059-60.

[3] Kinloch concurs with Ferguson's contention that at the most Ferguson is chargeable with inaction.

The district court further noted that only three districts were here involved, that the inter-district remedy ordered in this case is substantially consistent with the Missouri law, and that future operation of this district will require no deviation from Missouri law. Thus, the remedy here will not result in extensive disruption of public education in Missouri such as may have resulted in the broad metropolitan plan considered in *Milliken.*

We agree that the record fails to disclose that Ferguson actively participated in the creation of the segregated Kinloch district. Kinloch was created by discriminatory state action and implemented by the establishment of the Berkeley School District in 1937, leaving Kinloch as an all-black school district.

However, the district court's findings that Kinloch has been unlawfully maintained by each of the defendants, including Ferguson, for racially discriminatory reasons from 1937 to the present are not clearly erroneous. For instance, the court found that Kinloch was excluded from numerous reorganization plans proposed by the county and state defendants; on the occasion in 1949 when Kinloch was included, the plan was defeated by the electorate;[4] and even though virtually all

[4] Several districts were involved; the vote in Ferguson was tied for and against.

of the school districts in the north area near Kinloch have been enlarged through annexation since 1948, Kinloch has remained as a small segregated district.[5] Intentional school segregation in the past may not be ignored in assessing the impact of present inaction which has the effect of maintaining segregation. *Keyes v. School District No. 1, Denver, Colo.*, 413 U.S. 189, 211-12 (1973). In *Oliver v. Michigan State Board of Education*, 508 F.2d 178, 182 (6th Cir. 1974), the court stated:

> A finding of de jure segregation requires a showing of three elements: (1) action or inaction by public officials (2) with a segregative purpose (3) which actually results in increased or continued segregation in the public schools (footnote omitted).

The notion that school district lines may be casually ignored or treated as a mere administrative convenience is contrary to the history of public education. But school district lines are not sacrosanct, and if they conflict with the Fourteenth Amendment, federal courts have a duty to prescribe appropriate remedies. *Milliken, supra*, 418 U.S. at 741-45. We are satisfied that under all the circumstances in this case the district court had the authority to order the inter-district remedy. *Haney v. County Board of Education of Sevier County, Ark.*, 410 F.2d 920 (8th Cir. 1969); *Haney v. County Board of Education of Sevier County*, 429 F.2d 364 (8th Cir. 1970); *United States v. State of Texas*, 321 F. Supp. 1043 (E.D. Tex. 1970), *modified and affirmed*, 447 F.2d 441 (5th Cir. 1971), *cert. denied sub nom. Edgar v. United States*, 404 U.S. 1016 (1972).

---

[5] Prior to 1948 there were 84 school districts in St. Louis County. At the time of trial this had been reduced to 25 plus one county-wide special district.

Remedy

After determining that there was a constitutional violation in this case which required some kind of inter-district relief, the district court directed the state and county boards of education to submit plans to correct the situation. Under Missouri law (V.A.M.S. §§ 161.152, 162.161, 162.181) state and county boards of education have responsibilities in connection with school district reorganization. The state board provides technical and advisory assistance, and the county boards have the responsibility of making a comprehensive study of each school district of the county and submitting plans for reorganization of school districts to the state board of education. Reorganization plans are ultimately submitted to the voters for approval.

The Supreme Court has made it abundantly clear that school authorities are "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green v. County School Board*, 391 U.S. 430, 437-38 (1968). If school authorities fail in their affirmative obligations, only then may judicial authority be invoked to substitute its own plan. *Swann v. Board of Education*, 402 U.S. 1, 15-16 (1971).

Here the state and county officials submitted the three-district plan approved by the district court. Prior to its submission the officials concerned studied some nine different plans, which included the Berkeley-Kinloch and Ferguson-Kinloch mergers which were also presented to the district court and are again pressed before us as more sound than the one selected. The record reflects that state and county officials rejected the Berkeley-Kinloch plan as a viable alternative because it offered little chance for meaningful desegregation. The Ferguson-Kinloch plan was rejected principally because the assessed valuation of the two districts in relation to average

daily attendance would be well below the county average and its chances for financial success would be questionable.

The district court, sitting as trier of the facts, found "the Revised Plan [three-district plan] is the least disruptive alternative which is educationally sound, administratively feasible, and which promises to achieve at least the minimum amount of desegregation that is constitutionally required." That finding cannot be set aside unless clearly erroneous. Fed. R. Civ. P. 52(a). *See Northcross v. Board of Ed. of Memphis City Schools,* 489 F.2d 15, 17 (6th Cir. 1973). We conclude that the district court's choice of the three-district plan was not clearly erroneous and must be upheld.

Tax rate

The present tax rates in the three school districts are: Berkeley —$3.80; Kinloch—$4.97; and Ferguson—$5.38. The plan submitted by the Missouri State Board of Education and the St. Louis County Board of Education recommended that the court authorize and empower the board of education to set a uniform levy for the new district following a determination by the board of the local tax revenue necessary to provide the quality of educational services desired on a desegregated basis for all pupils, but not to exceed $5.38 per one hundred dollars assessed valuation (the Ferguson rate).

The district court found that "in order to effectively operate the desegregated district, as provided under the Revised Plan, a tax rate of $6.03 will be necessary." The court also found that "the tax rate should be uniform throughout the new district and that there was no reasonable possibility that such a tax levy would be approved by the required two-thirds vote in the aftermath of a desegregation order."[6] It therefore ordered that:

[6] Article X, § 11(c) of the Missouri Constitution authorizes increases in tax levies in excess of $1.25 and not more than $3.75 by a majority vote of the people, with levies of over $3.75 requiring a two-thirds majority vote.

> 5. The 1975 school tax levy shall be uniform throughout the new district and shall be set at $6.03. This rate, inclusive of the amount necessary to service the total debt of the enlarged district, shall be deemed to have been approved by the voters for the purposes of Article 10, section 11(c), Missouri Constitution.

388 F. Supp. at 1060.

Thereafter the State Board of Education of Missouri moved to amend the judgment by reducing the tax rate from $6.03 to $5.38 per one hundred dollars assessed valuation, indicating "that other funds may be available through action of the Missouri Legislature * * *." The district court in denying the motion noted that should additional funds be made available to the consolidated district either through the federal government or the state government, "the Board of the new district, pursuant to Article X, section 11(c), of the Missouri Constitution of 1945, permits the Board to lower the tax rate should that be appropriate." The court further noted that "under the testimony adduced in this case by the State Board of Education, on a levy of $5.38 the consolidated school district would run a deficit of approximately $400,000 annually. It seems to the Court to be unwise to start this consolidated district in such a precarious financial position."

Appellants Berkeley and Ferguson attack imposition of the tax levy without a vote of the people, as required by the Missouri Constitution, as being in violation of the Tenth Amendment to the Constitution of the United States.[7] The United States argues that the court did not set a tax rate but merely fixed the maximum levy the board could impose and that, in any event,

[7] It is also pointed out that under a Missouri decision where districts are combined by annexation (V.A.M.S. § 162.441), the existing tax rate in each district continues in force until changed by the voters of the new district. *State of Missouri ex rel. Fort Osage School District v. Conley,* 485 S.W.2d 469 (Mo. App. 1972).

a district court, sitting as a court of equity in school desegregation cases, has broad authority to remedy constitutional violations. *Swann v. Board of Education, supra,* 402 U.S. at 15.

It is anomalous to suggest that the district court has the power to disestablish a dual school system but does not have the power to fashion an appropriate remedy. In *North Carolina State Board of Education v. Swann,* 402 U.S. 43, 45 (1971), the court stated:

> [I]f a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees.

We have likewise held in ordering implementation of a school integration plan that "the remedial power of the federal courts under the Fourteenth Amendment is not limited by state law." *Haney v. County Board of Education of Sevier County, supra,* 429 F.2d at 368; *see also Griffin v. County School Board of Prince Edward County,* 377 U.S. 218, 233 (1964) (directing that the district court may, if necessary, require the supervisors to levy taxes in order to re-open public schools without discrimination).

We are satisfied that the district court had the authority to implement its desegregation order by directing that provision be made for the levying of taxes essential to the operation of the new school district. It is our view, however, that deference should be given to the plan submitted in good faith by the state and county officials and which was largely accepted by the court. It was the view of the state that with the receipt of anticipated funds through action of the legislature the present Ferguson rate would be adequate. Maximum consideration should be given the views of the state and local officials concerned so long as they appear compatible with the goals to be achieved. The maximum rate in the new district should be reduced to $5.38 per hundred.[8]

Governing Board

Under Missouri statutes governing annexation of school districts, V.A.M.S. § 162.441, the board of the annexing district is responsible for governing the enlarged district, and its membership remains intact until the elected members' terms expire. The State-County Revised Plan recommended that Ferguson, with 76% of the total enrollment, might be allocated four members and the Kinloch and Berkeley boards be authorized to designate one member each to serve on the six-member board. The district court accepted this recommendation and ordered that two positions on the Ferguson board be declared vacant, these seats to be filled by one member each from the Berkeley and Kinloch boards to be selected by them. In order to provide for an initial period of stable governance for the new district, the court directed that no members of the board of the new school district be elected in the April 1975 school election.[9]

We recognize that an interim governing plan must be fashioned by the district court which is fair to all concerned. We find no abuse of discretion on the part of the district court in formulating the plan previously ordered. It may be reinstated with adjustments necessitated by the passage of time since our stay order was entered.

---

[8] Prior to the decision in *Fort Osage School District, supra,* n. 7, several opinions of the Missouri Attorney General held that when one school district annexes another, the voter-approved levy of the annexing district applied to the annexed territory. *See, e.g., Op. Mo. Att'y Gen.* No. 362 (1969). It is also noted that the Missouri Constitution, Article X, § 3, requires uniform tax levies within the territorial limits of the authority levying the tax.

[9] Our stay order rendered moot the ban on the April 1975 election.

The decision of the district court is affirmed except with respect to the maximum tax rate which shall be no higher than that of the annexing district, which is $5.38 per hundred. Upon remand, the court is empowered to fix new dates for accomplishment of the annexation and make other adjustments in accordance therewith.

Affirmed in part, reversed in part; remanded for further action in accordance with this opinion.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit

United States of America, Plaintiff

v.

State of Missouri et al., Defendants

No. 71 C 555(1)

United States District Court
E. D. Missouri, E. D.

Aug. 27, 1973

* * * * * * *

Order

Meredith, Chief Judge.

The Court, having heard the evidence, considered the arguments of counsel, and having entered its Findings of Fact and Conclusions of Law,

It is hereby ordered, adjudged, and decreed:

1. That the defendants, their employees, agents, successors, and all those acting in concert or participation with them are hereby permanently enjoined from discriminating against any person because of race, color, religion, or national origin, in the operation of the public schools of St. Louis County, Missouri.

2. That the defendants State Board of Education, St. Louis County Board of Education, and their members and administrative officers are further enjoined to develop and file with this Court within 60 days of the entry of this order, with copies served upon counsel for all parties, a plan which will disestablish the racially dual system of school districts in St. Louis County and eliminate the continuing effects of past discrimination against, and denial of equal educational opportunities to, students in the Kinloch District. The defendant local school districts and officials, and their employees and agents, are enjoined to cooperate with the state and county defendants in the development of such a plan. The parties shall have thirty (30) days after the filing of the plan to file any objections which they may have.

[1] The plan shall show the projected attendance of students by race at the various schools, as well as the grade structures of the various schools which may be involved in the plan. The plan shall provide for the desegregation of faculty, staff, transportation, and extracurricular activities, Clark v. Board of Education of Little Rock School District, 449 F.2d 493 (8th Cir. 1971), cert. denied, 405 U.S. 936, 92 S.Ct. 954, 30 L.Ed.2d 812 (1972); Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211 (5th Cir. 1970), and shall include a justification of any schools in the affected area which are projected as all or substantially all black. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, at 21, 91 S.Ct. 1267,

28 L.Ed.2d 554 (1971). Although racial balance is not required, *Swann*, supra, at 24, 91 S.Ct. 1267, the plan should seek to achieve the greatest possible degree of actual desegregation taking into account the practicalities of the situation. Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33, 91 S.Ct. 1289, 28 L.Ed.2d 577 (1971).

Dates for hearings on any objections and for entry of an order requiring implementation of an approved final plan will be set by subsequent orders. The Court will retain jurisdiction of this cause to insure that a constitutionally-acceptable plan is adopted and that it is operated in a constitutionally permissible fashion.

Findings of Fact and Conclusions of Law

This action was commenced on September 3, 1971, when the United States filed a complaint under Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6, and the Fourteenth Amendment. Named as defendants were the State of Missouri, the Missouri State Board of Education, and its members, the Missouri Commissioner of Education, the St. Louis County Board of Education and its members, the St. Louis County Superintendent of Education, the School District of the City of Berkeley (hereinafter Berkeley District), Ferguson-Florissant RII School District (hereinafter Ferguson District), the Kinloch School District (hereinafter Kinloch District), and the respective superintendents of the three local districts.

The complaint alleged that the defendants were state and local public officials and agencies responsible for the general supervision and operation or organization of the named school districts. It was further alleged that Kinloch District was created by the defendants as a school district to be attended exclusively by black students and had been maintained as an

all-black district in such a manner as to deny equal educational opportunities to the students attending school there. The Government also contended that other feasible methods of school district organization in St. Louis County were available which would remedy the racial segregation and denial of equal educational opportunities alleged. The defendants filed responsive pleadings, and after extensive discovery, a hearing was held on July 10-13, 1972. Based on the evidence adduced at that hearing, and the pleadings and other papers filed, the Court makes the following findings of fact and conclusions of law:

Findings of Fact

1. The defendant State of Missouri and local school officials and agencies, and their predecessors, operate under color of and pursuant to Missouri law. The State Board of Education is vested with the power to supervise instruction in the public schools and otherwise carry out the educational policies of the state. It also distributes state funds to local school districts. In addition, the State Board has the duty to advise and provide technical assistance to county boards of education in developing school district reorganization plans and may approve or reject such plans. The Commissioner of Education is the chief administrative officer of the State Board and responsible for implementing its directives and policies.

2. The St. Louis County Board of Education is responsible for developing plans for the reorganization of the school districts of St. Louis County. The St. Louis County Superintendent of Education is the chief administrative officer of the County Board and responsible for implementing its directives and policies.

3. The three defendant local school districts are agencies of the State of Missouri, and, together with the named superin-

tendents, are responsible for the operation of the public schools within their respective school district boundaries. Both the Berkeley and the Ferguson districts are immediately adjacent to the Kinloch district, and all three districts are located in St. Louis County, Missouri.

4. The defendant State of Missouri, prior to 1954 required by its laws and constitution that pupils in the public schools be segregated on the basis of race.

5. Prior to 1937 the present Kinloch district and most of the present Berkeley district were one school district known as Kinloch School District Number 18 (hereinafter Kinloch No. 18). The public schools in Kinloch No. 18 were segregated in accordance with Missouri law; one high school and one elementary school were operated for white children; and one elementary school was operated for black children. The subsequent splitting of Kinloch No. 18 into two districts by the incorporation of the City of Berkeley and formation of the Berkeley district had the effect of creating a school district for white students, Berkeley, and another school district for black students, Kinloch. Thus, the existing dualism was made a part of the school district structure mandated by state law, and, consequently, more difficult for the local school officials to correct.

6. Before the incorporation of the City of Berkeley, two unsuccessful attempts had been made to divide Kinloch No. 18 into two separate school districts. The evidence shows that the proposed division of Kinloch No. 18, which was essentially the same in both attempts, was to be along racial lines. Data submitted to a 1937 County Arbitration Board by the proponents of the split include references to the proposed "white" and "colored" districts. Both attempts were rejected by the County Arbitration Board after the residents of the proposed Kinloch district, which was the "colored" district, voted overwhelmingly against the split.

7. On May 3, 1937, shortly after the second unsuccesful attempt to split Kinloch No. 18, a petition was filed with the St. Louis County Clerk seeking to incorporate the City of Berkeley. With the exception of the inclusion of a small portion of an adjacent school district, the boundary lines for the City were almost identical to the boundary lines of the "white" school district proposed in the two previous unsuccessful attempts to divide Kinloch No. 18. By including part of another school district, the City came within the provisions of a state law which permitted the establishment of a separate school district by vote of the residents of any incorporated city which encompassed territory of two or more school districts. In fact, on August 3, 1937, the first official act of the City of Berkeley Board of Aldermen was to adopt and file a plat map for the city because ". . . [t]he inhabitants wished to form a school district coterminous with the boundaries of the city."

8. The Berkeley district was formed in August 1937, and in the 1937-38 school year the Berkeley district had 648 white and 16 black resident students, while Kinloch district had 6 white and 872 black resident students. The school districts remained of one race, however, since by agreement the few white residents of the Kinloch district attended Berkeley schools and the few black residents of Berkeley attended Kinloch schools. Moreover, all teachers and all school board members in the Kinloch district were black, while in Berkeley all teachers and school board members were white. The November 13, 1937, findings and decision of a County Board of Arbitration concerning allocation of funds between Kinloch No. 18 and the Berkeley district accurately summarized the situation as follows:

> "Prior to the organization of the Berkeley School District, District 18 was divided into two sections by common consent, one occupied by whites, and the other by colored people. The School Board of the old District 18 recognized this division between whites and colored and under-

took to keep the administration of the affairs of the District divided between white and colored, providing white teachers for the white section and colored teachers for the colored section. No white children attended the colored school and no colored children attended the white school. . . ."

". . . No high school building has been erected in the colored section, which is located within the territorial limits of what is now District 18 after the organization of the Berkeley School District. . . ." The high school building in the white section (now Berkeley School District) was practically completed before the separation, . . ."

"The division of the District did not change the location of any school building; did not make any change in the teaching staff; did not require any diversion of pupils from one school to another; did not increase or lessen the expenses of operating the schools and happily made no change in the previous division of colored and white schools, teachers or children. . . ."

The evidence shows that the boundaries of the City of Berkeley followed almost precisely the racial residential patterns as they existed in 1937, and the separation of the races was virtually total. The result of the incorporation of the City of Berkeley was to carve an all-white school district out of the former Kinloch No. 18 district.

9. A direct and foreseeable consequence of the creation and maintenance of Kinloch as a small, all-black school district has been the provision of educational opportunities which are, by any of the objectively measurable indicia normally used by defendants, markedly inferior to the opportunities offered in the adjoining Ferguson and Berkeley districts, as well as those offered in most other school districts in St. Louis County.

10. Evidence was presented concerning the relative position of Kinloch district to the Berkeley district, the Ferguson district, and other school districts in St. Louis County in the areas of (1) assessed valuation per pupil in average daily attendance (ADA), (2) adequacy of facilities, (3) faculty qualifications and stability, (4) curricular offerings, and (5) state classification and other accreditation. In all areas, Kinloch district ranked below Berkeley and Ferguson and most other school districts in St. Louis County. For example, in the 1970-71 school year, Kinloch district had the lowest assessed valuation per pupil in ADA of any school district in St. Louis County; Kinloch's assessed valuation was one-third of Ferguson's and one-sixth of Berkeley's. Assessed valuation per pupil in ADA is a significant indicator of a school district's ability to finance education through the local property tax and a factor which county and state officials take into account in initiating and approving school district reorganization plans.

11. The effects of such a low assessed valuation, when coupled with the small size of the Kinloch district, is evident from the comparative facilities, curricula, and faculty salaries which Kinloch can offer. Dr. Clifford Hooker, plaintiff's expert witness, inspected each school building in the three districts involved here and testified that the Kinloch buildings and equipment were markedly inferior to the buildings and equipment in the other two districts, particularly at the high school and junior high school levels. He described the small library, poor lighting, inadequate gym, and small amount of equipment and space for shop, home economics, or other specialty classes at the Kinloch High School. It was his opinion, given the present condition of the building, that no one should go to school there. He gave similar testimony concerning the junior high school and two elementary schools in Kinloch, one of which, he said, should be closed. By contrast, both Berkeley and Ferguson have modern, well-equipped buildings. One other example of the educational disparities between the districts in the

number of library books available to the students: Berkeley has 11.5 volumes per student; Ferguson has 8.1 volumes per student; and Kinloch has 4.8 volumes per student.

12. The disparity in available funds is also reflected in the average faculty salaries in the three districts. In 1971-72 Berkeley paid an average salary of $10,089.36, Ferguson paid $9,575.68, and Kinloch paid $7,794.03. Two probable effects of the lower salary in Kinloch are a higher faculty turnover rate and a lower percentage of teachers with master's degrees than the other two districts. Both the stability of the faculty and the training of the available teachers have a significant effect on the quality of the educational program that can be offered. Moreover, Kinloch district's lack of funds, plus its small size, have resulted in a more limited choice of curricula to Kinloch high school students than to high school students in either the Berkeley or Ferguson districts.

13. The Missouri Department of Education recognizes the differences between the school districts by its classification system: Kinloch district is presently classified as AA, while both of the other districts are classified as AAA, the highest rating. It is unusual to find school districts with less than an AAA classification in metropolitan areas of relatively dense population, and, in fact, only two other school districts in St. Louis County have less than an AAA classification.

14. The education deficiencies of the Kinloch district outlined above have been long-standing problems and have frequently been brought to the attention of county and state officials. School officials and other residents of Kinloch, from the first years of the school district's formation, have met with state and county officials on several occasions concerning the problems faced by the Kinloch district. Annual reports issued by the county superintendent make it clear that the problems are not of recent origin. By its annual evaluations, the State Department of Education was also aware of the educational

deficiencies in Kinloch district. For example, in 1955 Kinloch district was assigned an unclassified status. Although Kinloch was subsequently restored to classified status, the Department has continued to note serious deficiencies in Kinloch's education program.

15. In spite of their knowledge that the Kinloch students were racially segregated and that the school district was unable to provide educational opportunities equivalent to the surrounding school districts, the defendants have by their actions maintained Kinloch as a small, virtually all-black school district until this day. On numerous occasions, the county and state defendants have proposed reorganization plans for the school districts in St. Louis County, but have not included Kinloch district in such plans because it was all-black and the officials believed that the voters of surrounding school districts would reject consolidation with Kinloch for that reason. On the one occasion when consolidation of Kinloch with the Berkeley and Ferguson districts was recommended, the reorganization proposal was defeated by referendum.

16. Prior to 1954, the racial identifiability of the Berkeley and Kinloch districts was maintained through a formal arrangement whereby black students residing in Berkeley would attend Kinloch schools and white students living in Kinloch would attend Berkeley schools. Berkeley did not employ any black teachers until 1960, and Kinloch did not employ any white teachers prior to 1967. No white students were enrolled in the Kinloch schools until the 1970-71 school year. In the 1971-72 school year the racial compositions of the faculties and student bodies of Kinloch district and the two immediately adjacent school districts, Berkeley and Ferguson, were as follows:

	Students		Faculty		
	Total	% Black	White	Black	% Black
Berkeley	5,040	20.8	252	12	4.5
Ferguson	18,889	1.9	429	5	1.1
Kinloch	1,201	99.3	8	53	85.5

The above statistics and other evidence show that the present arrangement of school administration offers no prospect, and has never offered any prospect, of disestablishing the racially dual system of school districts previously established by state action or of relieving the denial of equal educational opportunities to the black students of Kinloch district.

17. The state and county defendants have recognized that fact for many years, but have exercised their powers in such a way as to exclude Kinloch district from any remedial benefits. As late as 1955, Kinloch district was designated as a Negro School District in the state superintendent's report and was assigned as the responsibility of the State Department of Education's Supervisor of Negro Education. Moreover, in exercising their powers of school district reorganization state and county school officials have, because of the race of the resident students, treated Kinloch district differently from other similarly situated school districts.

18. Under Missouri law, the county board of education develops plans for school district reorganization and submits them for approval to the state board. (Rev.Mo.Stats.1969, § 162.161, V.A.M.S.). Since the creation of the St. Louis County Board of Education in 1948, eight different school district reorganization plans have been submitted.

19. Kinloch district's small number of students and low assessed valuation make it a prime candidate for reorganization under the standards employed by the county board. The county superintendent has long been of the opinion that Kinloch district should be reorganized. Likewise, state school officials have thought that Kinloch should be reorganized. In addition, studies concerning school district reorganization, commissioned by the state or county, have uniformly recommended that Kinloch district be consolidated with other school districts. Moreover, in 1967, the Kinloch district itself requested the county board to

reorganize it with any other district in St. Louis County. It is, thus, clear that educationally sound and administratively feasible alternative methods of school district organization are available which would facilitate the elimination of the racial segregation of, and the denial of equal educational opportunities to, the Kinloch students.

20. Since 1948, virtually every school district in the north county area near Kinloch has been enlarged through reorganization, annexation, or consolidation. Of the eight reorganization plans proposed by the county board, however, only one, the 1949 Revised First Plan, included Kinloch district among those districts proposed for reorganization. Moreover, the county board has refused to devise any reorganization plans consistent with the recommendations of the studies mentioned above or with the request of the Kinloch district.

21. Mr. Arthur L. Summers, director of the State Department of Education Reorganization Section from 1949 to 1968, testified that he was informed by county board members that it would be difficult to reorganize Kinloch because it was all black and the neighboring districts would oppose merger. In conversations with county officials, residents of Kinloch were given the same reason for the county board's failure to reorganize the school district. For example, the minutes of a county board of education meeting reflect the following comments concerning the 1962 University of Chicago Study which recommended the consolidation of Berkeley and Kinloch:

> "Mr. Terrill [administrative officer of the Kinloch Board] expressed doubts as to selling the proposition of merger since the problem was not only financial but social as well. Mr. Weinstock [County Board of Education member] posed the question—How can we find a solution to the social problem? Mr. Oliver [Kinloch Board President] stated that Berkeley had and was getting negroes as residents

through the current sale of homes—that education could be a means of solving the social problem."

Mr. Oliver testified that the quoted discussion was in reference to racial problems. The evidence shows, therefore, that both state and county school officials were aware that some racial considerations were involved in the reorganization of Kinloch district and that they acted on those considerations to the detriment of the Kinloch students.

22. The State of Missouri has, through the actions of its officials and agencies or by referenda, created and maintained Kinloch district as a small, all-black school district because of the race of the resident students and has failed to provide those students with educational opportunities equivalent to the opportunities provided students in the immediately surrounding school districts.

Conclusions of Law

1. This Court has jurisdiction of the parties and the subject matter of this action under section 407 of the Civil Rights Act of 1964 (42 U.S.C. § 2000c-6), and under 28 U.S.C. § 1345 and the Fourteenth Amendment.

[2] 2. The defendant State of Missouri has assumed the obligation of providing a free, public education to all of the school age children in the State. Mo.Const., Art. IX, § 1(a), V.A.M.S. It has chosen to satisfy that obligation by the delegation of responsibilities to various officials and instrumentalities of the State, including the other defendants herein. Kansas City v. School District of Kansas City, 356 Mo. 364, 201 S.W.2d 930 (1947); School District of Oakland v. School District of Joplin, 340 Mo. 779, 102 S.W.2d 909 (1936); City of Edina to use of Pioneer Trust Co. v. School District of City of Edina, 305 Mo.

452, 267 S.W. 112 (1924). Having chosen to provide a free, public education, the State must insure that the education is provided in a manner which does not discriminate against any group of persons on account of their race and which is consistent with the Equal Protection Clause of the Fourteenth Amendment. Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.2d 256 (1964).

[3] 3. A state, such as Missouri, which has in the past operated a racially dual system of public education, pursuant to state constitutional and statutory requirements is, and has been since 1954, under an additional constitutional obligation to take such affirmative measures as are necessary to disestablish that dual system and to eliminate the continuing vestiges of that system. Brown v. Board of Education of Topeka, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), and 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955); Green v. School Board of New Kent County, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968); Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971).

[4] 4. Kinloch district was created as a part of Missouri's dual system of public education and remains as a vestige of that system. It is irrelevant that Missouri law did not require school districts to be separated by race where, as here, the establishment of the segregated district was accomplished under color of state law and served to facilitate the segregated system of education at that time required by state law. Haney v. County Board of Education of Sevier County, Ark., 410 F.2d 920, 924 (8th Cir. 1969); United States v. State of Texas, 321 F.Supp. 1043 (E.D.Tex. 1970); 330 F.Supp. 235 (E.D.Tex.1971), modified and affirmed, 447 F.2d 441 (5th Cir. 1971), cert. denied, 404 U.S. 1016, 92 S.Ct. 675, 30 L.Ed.2d 663 (1972).

[5] 5. Even absent the state laws and constitutional provisions requiring racial segregation, the factual circumstances

here, which show that, because of the race of its resident students, Kinloch district was created and maintained through state action as a small, racially segregated and inadequately funded school district, establish a violation of the Equal Protection Clause that requires affirmative, corrective action by the State of Missouri and its instrumentalities. United States v. School District 151 of Cook County, Illinois, 404 F.2d 1125 (7th Cir. 1968) and 432 F.2d 1147 (7th Cir. 1970); Davis v. School District of City of Pontiac, Inc., 443 F. 2d 573 (6th Cir. 1971); Kelly v. Guinn, 456 F.2d 100 (9th Cir. 1972); Taylor v. Board of Education of City School District of City of New Rochelle, 294 F.2d 36 (2nd Cir. 1961), cert. denied, 368 U. S. 940, 82 S.Ct. 382, 7 L.Ed.2d 339 (1961).

[6, 7] 6. The incorporation of the City of Berkeley and subsequent creation of the Berkeley district by the action of a state court and through referenda procedures provided by state statute were state actions within the contemplation of the Fourteenth Amendment. Hunter v. Erickson, Mayor of Akron, 393 U.S. 385, 89 S.Ct. 557, 21 L. Ed.2d 616 (1969); Reitman v. Mulkey, 387 U.S. 369, 87 S.Ct. 1627, 18 L.Ed.2d 830 (1967); Lucas v. Forty-Fourth General Assembly of Colorado, 377 U.S. 713, 84 S.Ct. 1459, 12 L.Ed.2d 632 (1964); Shelley v. Kraemer, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948). The evidence showing that the boundaries of the City of Berkeley were of an irregular shape, conforming closely to the racial residential patterns and that the racial separation was virtually complete raises an inference of racial discrimination which the defendants have the burden of overcoming. Gomillion v. Lightfoot, Mayor of Tuskegee, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed. 2d 110 (1960); State of Alabama v. United States, 304 F.2d 583, 584 (5th Cir. 1962); United States v. Hinds County School Board, 417 F.2d 852, 858 (5th Cir. 1969); Cf. Avery v. Georgia, 345 U.S. 559, 73 S.Ct. 891, 97 L.Ed. 1244 (1953). Given the above evidence of a racial classification by the state, defendants cannot rely upon just any reasonable basis for the

action, but must show a compelling state interest in the action taken. Cf. Hawkins v. Town of Shaw, Miss., 437 F.2d 1286 (1971), aff'd en banc, 461 F.2d 1171 (5th Cir. 1972); Kennedy Park Homes Assoc., Inc. v. City of Lackawanna, New York, 436 F.2d 108 (2nd Cir. 1970).

7. Where, as here, the state and county officials, plus all professional educators who have considered the school district arrangement in St. Louis County, have recommended the exact opposite course of action from that followed in the creation and maintenance of the Kinloch district, no state interest has been shown in continuing such an arrangement. United States v. Scotland Neck City Board of Education, 407 U.S. 484, 92 S.Ct. 2214, 33 L.Ed.2d 75 (1972). The defendants have failed to overcome the evidence of racial discrimination.

[8] 8. The State cannot escape responsibility for the racial discrimination disclosed in this case or the obligation to correct the effects of such discrimination by neatly compartmentalizing the authority and responsibilities of its various instrumentalities and then contending that no single instrumentality is wholly responsible for the unlawful segregation or has the power to correct the unlawful segregation. The constitutional rights of children not to be discriminated against on grounds of race, color, or national origin can neither be nullified openly and directly, nor nullified indirectly through evasive schemes for segregation, whether attempted ingeniously or ingenuously, and every law or resolution of the legislature, every act of the executive, and every decree of the state courts, which, no matter how innocent on its face, seeks to subvert the enjoyment of a constitutional right is unconstitutional and null. Lane v. Wilson, 307 U.S. 268, 59 S.Ct. 872, 83 L.Ed. 1281 (1939); Cooper et al., Members of Bd. of Dir. of Little Rock, Ark., Independent School District v. Aaron, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed. 2d 5 (1958); Bush v. Orleans Parish School Board, 190 F.Supp. 861 (E.D.La.1960), aff'd sub nom., City of New Orleans v.

Bush, 366 U.S. 212, 81 S.Ct. 1091, 6 L. Ed.2d 239 (1961); Alexander v. Holmes County Board of Education, 396 U.S. 19, 90 S.Ct. 29, 24 L.Ed.2d 19 (1969); Poindexter v. Louisiana Financial Assistance Commission, 275 F.Supp. 833 (E.D.La. 1967) aff'd per curiam, 389 U. S. 571, 88 S.Ct. 693, 19 L.Ed. 2d 780 (1968).

[9] 9. The state and county defendants have the authority to reorganize the school districts of Missouri to better accomplish the educational policies and responsibilities of the state. Their exercise of that authority to exclude the Kinloch district, because of the race of its resident students, from reorganization plans of school districts in St. Louis County resulted in the maintenance of separate neighboring school districts, one black and the other virtually all-white, in violation of the Fourteenth Amendment. Lee v. Macon County Board of Education, 448 F.2d 746 (5th Cir. 1971); Haney v. Sevier County Board of Education, Arkansas, 410 F.2d 920 (8th Cir. 1969); Turner v. Warren County Board of Education, 313 F.Supp. 380 (E.D.N.C.1970), aff'd sub nom. Turner v. Littleton-Lake Gaston School District, 442 F.2d 584 (4th Cir. 1971); United States v. State of Texas, 321 F. Supp. 1043 (E.D.Tex.1970); 330 F. Supp. 235 (E.D.Tex.1971), modified and aff'd, 447 F.2d 441 (5th Cir. 1971), cert. denied, 404 U.S. 1016, 92 S.Ct. 675, 30 L.Ed.2d 663 (1972); Clark v. Board of Education of Shelbyville, Kentucky, 350 F.Supp. 149 (E.D.Ky.1972). In the one instance in 1949, when Kinloch district was included in a reorganization plan, the electorate defeated the proposal on referendum. Whether the inclusion of Kinloch in the 1949 reorganization proposal is considered an effort by the state to correct the long-standing education disparities (Cf. Plessy v. Ferguson, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256), which effort was nullified by the electorate, or whether the rejection of the proposal by the electorate is considered as action which frustrated and made more burdensome the future attainment of their constitutional rights by the black citizens of Kinloch

(Cf. Hunter v. Erickson, 393 U.S. 385, 89 S.Ct. 557, 21 L.Ed.2d 616 (1969); Reitman v. Mulkey, 387 U.S. 369, 87 S.Ct. 1627, 18 L.Ed.2d 830 (1967); Lucas v. Forty-Fourth General Assembly of Colorado, 377 U.S. 713, 84 S.Ct. 1459, 12 L.Ed.2d 632 (1964), the referendum action violated the Fourteenth Amendment. United States v. Scotland Neck City Board of Education, 407 U.S. 484, 92 S.Ct. 2214, 33 L.Ed.2d 75 (1972). The state and county defendants cannot justify their exclusion of Kinloch district from reorganization plans on the grounds that the other school districts would oppose such a reorganization.

> "[I]t should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." *Brown*, 349 U.S. at 300, 75 S.Ct. at 756.

10. In any event, the cumulative effect of the actions of the state and local defendants has been the creation, operation, support, and general supervision by the State of Missouri of a small school district which is unconstitutionally segregated and whose students are denied an equal educational opportunity. United States v. State of Texas, 321 F.Supp. 1043 (E.D.Tex.1970); 330 F.Supp 235 (E.D.Tex.1971), modified and affirmed, 447 F.2d 441 (5th Cir. 1971), cert. denied, 404 U.S. 1016, 92 S.Ct. 675, 30 L.Ed.2d 663 (1972).

11. In Brown v. Board of Education, 349 U.S. 294, 300-301, 75 S.Ct. 753, 756, 99 L.Ed. 1083 (1954), the Supreme Court contemplated:

> "[that conversion to a unitary system would raise] . . . problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis

and revision of local laws and regulations which may be necessary in solving the foregoing problems."

And the Court charged the states with the responsibility of taking steps to resolve such problems. 349 U.S. at 301, 75 S.Ct. 753. Here, the evidence shows that there are numerous educationally sound and administratively feasible alternative methods for reorganizing the school districts of St. Louis County which would eliminate the unconstitutional segregation and denial of equal educational opportunities caused by the present arrangement. Whether the present arrangement of school districts is considered a vestige of the previously state-imposed dual school system or a continuing effect of racially discriminatory state action, the defendants are obliged to take the necessary steps to establish a constitutional system of school operation, and they bear a heavy burden of justification for continuing the present ineffective method of school district organization. Green v. School Board of New Kent County, 391 U.S. 480, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968); Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971); Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33, 91 S.Ct. 1289, 28 L.Ed.2d 577 (1971). In fact, the only reason offered for failing to reorganize the school districts so as to desegregate Kinloch district was the opposition of the surrounding white school districts. But, as previously indicated, that is no justification for continuing the present arrangement of school districts, which is both unsound and unconstitutional. Monroe v. Board of Commissioners of City of Jackson, 391 U.S. 450, 88 S.Ct. 1700, 20 L.Ed.2d 733 (1968).

12. Since the defendants have failed to comply with their constitutional obligations, this Court has not only the power but the duty to enter a decree which will correct the continuing effects of past discrimination as well as bar like discrimination in the future. Louisiana v. United States, 380 U.S. 145, 154,

85 S.Ct. 817, 13 L.Ed.2d 709 (1965). The primary responsibility for insuring a constitutional structure of public education is the state's, therefore, it is appropriate for the Court to order the state and other defendants to develop and implement a plan which will "achieve the greatest possible degree of actual desegregation, taking into account the practicalities of that situation." Davis v. Board of School Commissioners of Mobile County, 402 U.S. at 37, 91 S.Ct. at 1292 (1971); Brown v. Board of Education, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1954). An appropriate order will be entered requiring such a plan to be developed to include provisions to protect the interests of faculty, staff, and students in the implementation of the plan. Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211 (5th Cir. 1969). The Court will retain jurisdiction to hold necessary hearings and enter a final desegregation plan and thereafter to insure an orderly transition to operation under the final plan, and to see to it that future actions do not perpetuate or re-establish the dual system. Brown v. Board of Education, 349 U.S. at 301, 75 S.Ct. 753; Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. at 21, 91 S.Ct. 1267.

United States of America,
Plaintiff,

v.

State of Missouri et al.,
Defendants.

No. 71 C 555 (1).

United States District Court
E. D. Missouri, E. D.

Jan. 9, 1975

* * * * * * *

Findings of Fact and Conclusions of Law

Meredith, Chief Judge

On August 27, 1973, this Court entered an opinion and order (363 F. Supp. 739), which held that black students in the Kinloch School District had been unlawfully discriminated against because of their race and directed the State and County defendants to prepare a plan to eliminate such discrimination. Pursuant to this order, a plan was prepared and filed by the State and County boards of education on November 21, 1973, which proposed consolidation of the Kinloch, Berkeley, and Ferguson-Florissant School Districts. A revised version of this plan (hereinafter the Revised Plan) was submitted on November 15, 1974, and updated on December 31, 1974. Alternative desegregation plans have also been submitted by other parties.

The Court, having considered these plans, the evidence presented by the parties concerning these plans, and arguments of counsel, makes the following findings:

Of the plans presented to the Court, the Revised Plan is the least disruptive alternative which is educationally sound, administratively feasible, and which promises to achieve at least the minimum amount of desegregation that is constitutionally required.

This Court's order of October 4, 1974, which directed the State Board of Education to submit the Revised Plan, required that the "busing of students shall be at a minimum." Although some increase over the number of students currently transported in the three affected districts is required under the Revised Plan, this additional transportation is necessary in order to effectively desegregate. No health or safety hazard is presented by this additional transportation. Alternative plans submitted by local school district defendants, insofar as they rely on geographic zoning, will not achieve desegregation.

[1] Defendant Ferguson-Florissant School District offered testimony that in order to effectively operate the desegregated district, as provided under the Revised Plan, a tax rate of $6.03 will be necessary. There was also testimony that the tax rate should be uniform throughout the new district and that there was no reasonable possibility that such a tax levy would be approved by the required two-thirds vote in the aftermath of a desegregation order. The Court accepts this testimony as accurate. Therefore, in order to insure the administrative feasibility of operating the new desegregated district, the Court's order provides for a tax rate of $6.03. The board of the new district will, of course, retain authority to adjust the tax levy in accordance with the provisions of Missouri Law.

[2] The Court has legal authority to order implementation of the Revised Plan.

Milliken v. Bradley, 418 U.S. 717, 94 S.Ct. 3112, 41 L. Ed.2d 1069, 1974, dealt with the question of inter-district

relief, but the precise question in that case involved "the validity of a remedy mandating cross-district of inter-district consolidation to remedy a condition of segregation found to exist in only one district." (418 U.S. 744, 94 S.Ct. at 3127) The Court went on to say that "an inter-district remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race." (418 U.S. 745, 94 S.Ct. at 3127) This latter statement accurately describes what the evidence in this case shows and what this Court has previously found, i.e., an arrangement of school districts which has caused substantial segregation and which is both a vestige of the previously imposed dual school system and a continuing effect of racially discriminatory state actions on the part of the defendants in this case.

The Ferguson-Florissant defendants challenge their inclusion in the Revised Plan on the grounds that the Ferguson-Florissant District was not directly involved in the creation of the Kinloch District as an all black district. However, it is significant that the Supreme Court in the *Milliken* case cited approvingly (418 U.S. 717, 94 S.Ct. 3112) two lower court cases[1] which mandated inter-district desegregation where the separate systems were an historic tool of dualism even though specific acts of discriminatory conduct were not found to have been perpetuated by adjoining school districts. The Court finds no distinction between these cases and the instant case. Moreover, the evidence set out in this Court's previous findings indicate that each defendant, including the Ferguson-Florissant School District, is, to a substantial degree, respon-

[1] Haney v. County Board of Education of Sevier County, 429 F.2d 364 (8th Cir. 1970); United States v. Texas, 321 F.Supp. 1043 (E.D.Tex.1970), aff'd 447 F.2d 441 (5th Cir. 1971), cert. denied, sub nom., Edgar v. United States, 404 U.S. 1016, 92 S.Ct. 675, 30 L.Ed.2d 663 (1972).

sible for the maintenance of Kinloch as a segregated district. The only justification for the maintenance of Kinloch as a small, segregated and inadequately funded district was the opposition, based on racial consideration, of the surrounding districts to numerous proposals to alter that situation, including the rejection by the electorate of the 1949 reorganization plan. This is an instance where the failure to act or resistance for discriminatory reasons to actions tending to correct segregation amounted to a constitutional wrong. See United States v. Board of School Commissioners, Indianapolis, Ind., 503 F.2d 68, 86 (7th Cir. 1974).

In addition, in this case, only three districts, not fifty-two districts, are involved. The inter-district remedy ordered in this case is substantially consistent with Missouri law and future operation of the district will require no deviation from Missouri law. Thus, the remedy in this case will not result in extensive disruption of public education in Missouri such as may have resulted in the broad metropolitan remedy considered in *Milliken*. See Newburg Area Council v. Board of Education, 489 F.2d 925 (6th Cir., December 11, 1974).

Judgment will be entered in accordance with these findings.

Judgment

Findings of fact and conclusions of law, dated this date, are hereby incorporated in and made a part of this judgment.

It is hereby ordered, adjudged, and decreed:

1. The defendants, their employees, agents, successors, and all those acting in concert or participation with them, are hereby permanently enjoined from discriminating against any person because of race, color, or national origin in the operation of the public schools of the territory encompassed by the Kinloch, Berkeley, and Ferguson-Florissant School Districts.

2. In order to effect an orderly desegregation, the procedure shall be substantially that provided by the Statutes of Missouri pertaining to an annexation of a six-director school district by another, RSMo 1969, V.A.M.S., section 162.441 et seq.; the Berkeley School District and the Kinloch School District shall be annexed to the Ferguson Reorganized School District R-2 (Ferguson-Florissant School District), and the boundary lines of the Ferguson Reorganized School District R-2 shall be changed effective February 1, 1975, to include the Berkeley School District and the Kinloch School District.

3. The Berkeley School District and the Kinloch School District shall deliver all property, records, books, and papers, and transfer all funds and moneys to the Ferguson Reorganized School District R-2 on or before February 1, 1975, following the entry of this order. The Ferguson Reorganized School District R-2 shall faithfully perform all existing contracts and shall assume all legal obligations of the Berkeley School District and of the Kinloch School District.

4. Any and all outstanding general obligation bonds of each of the districts shall be obligations pursuant to and shall be retired in accordance with RSMo Stat. 1969, V.A.M.S. section 164.051, and any other applicable Missouri Statutes.

5. The 1975 school tax levy shall be uniform throughout the new district and shall be set at $6.03. This rate, inclusive of the amount necessary to service the total debt of the enlarged district, shall be deemed to have been approved by the voters for the purposes of Article 10, section 11(c), Missouri Constitution, V.A.M.S.

6. The seats of two Ferguson-Florissant members of the Board of Education to be designated by the Ferguson-Florissant Board and reported to the Court are hereby declared vacant as of February 1, 1975. These seats shall be filled by one member

of the Kinloch Board and one member of the Berkeley Board, who shall be designated by their respective boards and reported to the Court by February 1, 1975. In the event any of the required designations are not made, the Court shall make the designations. The Board of Education of the Ferguson Reorganized School District R-2 shall thereupon name the said two designees to replace the two members whose seats shall have been vacated. The designees of the Berkeley and Kinloch Boards shall serve until the election in April 1978. The four remaining members of the Ferguson-Florissant Board will draw lots immediately to determine the length of their individual terms of office, with two members serving two years and two serving one year.

7. In order to provide for an initial period of stable governance for the new district, no members of the Board of Education of the new school district shall be elected in the school election in April 1975. The defendant State of Missouri, its officers, and agencies, and the defendant school districts, Kinloch School District, Berkeley School District, and Ferguson Reorganized School District R-2, their officers, agents, and employees are hereby enjoined from accepting any declarations of candidacy or in any way conducting any school election for the election of members of the respective Boards of Education at the general school election in April 1975.

8. The defendants are further enjoined to implement the Plan of Desegregation submitted by the State and County Boards of Education, as revised on November 15, 1974, with respect to assignment of pupils, placement of teachers, administrative staff and other employees, transportation of pupils, closing and maintenance of school buildings, affirmative action, curriculum, educational services and extracurricular activities, and community education so as to be in substantial compliance therewith at the commencement of classes for the school year 1975-1976 on or about September 1, 1975, with the following clarifications:

(a) School officials shall retain flexibility in their authority to make student assignments. However, no deviation from student assignment, as provided under the Revised Plan, shall be permitted which results in a lesser degree of integration in any school than that projected under the Revised Plan. Transfers of students to schools other than assigned schools shall be permitted only when the student transfers from a school in which the student's race is in a majority to a school in which the student's race is in a minority.

(b) The primary burden of desegregation under the Revised Plan unavoidably falls on black students because of the educational necessity, recognized by all the parties, of terminating the present use of three school facilities located in the Kinloch School District.[1] In order to minimize this burden as much as possible, the following steps shall be taken:

(1) If school authorities elect to use the grouping option for the Kinloch, Holman, and Springdale Elementary Schools, as provided under the Revised Plan, Kinloch Elementary shall be assigned lower elementary grades instead of grades five and six.

(2) The Smith Elementary School, located in the Berkeley District, shall remain open and be utilized in accordance with the original plan submitted by the State and County Boards of Education on November 21, 1973, except that grades five-six shall be assigned to the Smith School.

(3) Every effort shall be made to utilize the Kinloch High School and Kennedy Junior High facilities for educational and community purposes. (See Rev.Mo. Stat., § 177.091) If construction of new school fa-

[1] Stipulation filed December 12, 1974, paragraphs 33, 34, and 35.

cilities is deemed necessary in the future, consideration must be given to construction of such facilities in locations which will lessen the burden of transportation on black students.

(4) School authorities shall take steps to insure that black students transferred to formerly white schools are made to feel a part of such schools. To this end, consideration shall be given to renaming such schools, changing school colors, etc., and the preservation of Kinloch High School trophies and awards. Non-discriminatory regulations and procedures shall be developed concerning disciplinary measures.

(5) Prior to the implementation of student and faculty desegregation, school authorities shall establish in-service training programs to prepare administrators, teachers, board members, students, and the community for desegregation.

(c) On or before July 1, 1975, school authorities shall cause to be filed with the Clerk of this Court, with copies served on counsel for plaintiff and the State and County Boards of Education, a report showing the names, race, and positions of all faculty and staff members in the new district who are proposed to be dismissed or demoted for the 1975-76 school year as a result of desegregation, together with a copy of the non-racial objective criteria required by Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211 (5th Cir. 1970), to be used in effectuating such dismissals or demotions.

(d) On or before October 15, 1975, and annually on that date thereafter, until further order of the Court, school authorities shall cause to be filed with the Court, with copies served on counsel for the plaintiff and State and County Boards of Education, a report showing the grade structure

and number of students and teachers, by race, assigned to each school in the new district; the number, by race, of administrators, teachers, and staff newly hired during the past year; the requests and the results which have accrued, by race, under the majority to minority transfer provision of this order; a brief description of any present or proposed construction or closing of any school facilities; and a description of the activities of the bi-racial committee established pursuant to the provisions of the Revised Plan.

9. The Court shall retain jurisdiction of this action to insure effective implementation of desegregation.

United States District Court
Eastern District of Missouri
Eastern Division

United States of America, Plaintiff, vs. State of Missouri, et al., Defendants.	No. 71 C 555 (1).

ORDER

The State Board of Education of Missouri and Arthur L. Mallory, Commissioner of Education for the State of Missouri, have moved to amend the judgment entered on January 9, 1975, by amending paragraph 5 of said judgment to reduce the tax rate from $6.03 to $5.38 per one hundred dollars assessed valuation. Their brief indicates that other funds may be available

through action of the Missouri Legislature to restore special funds which had heretofore gone to some of the districts that may be lost as a result of the consolidation. The Court is of the opinion that should additional funds be made available to this consolidated district, either through the Federal Government or the state government in any manner, the Board of the new district, pursuant to Article X, Section 11(c), of the Missouri Constitution of 1945, permits the Board to lower the tax rate should that be appropriate.

Under the testimony adduced in this case by the State Board of Education, on a levy of $5.38 the consolidated school district would run a deficit of approximately $400,000 annually. It seems to the Court to be unwise to start this consolidated district in such a precarious financial position. Accordingly,

It Is Hereby Ordered that the motion of the state defendants be and the same is denied.

Dated this 24th day of January, 1975.

/s/ JAMES H. MEREDITH
United States District Judge

United States District Court
Eastern District of Missouri
Eastern Division

United States of America,
Plaintiff,
vs.
State of Missouri, et al.,
Defendants.
No. 71 C 555 (1).

ORDER

This case is now before the Court on remand from the Eighth Circuit Court of Appeals. The judgment of the Court of Appeals of May 14, 1975 empowered this Court to fix new dates for accomplishment of the annexation previously ordered by this Court and to make other adjustments in accordance with the judgment of the Court of Appeals. Accordingly,

It Is Hereby Ordered that the defendants implement forthwith all the provisions of this Court's judgment of January 9, 1975 (reported at 388 F. Supp. 1058), with the following exceptions:

1. The annexation of the Berkeley School District and the Kinloch School District by the Ferguson Reorganized School District R-2, shall be effective with the entry of this Order.

2. The Berkeley School District and the Kinloch School District shall deliver all property, records, books and papers, and transfer all funds and moneys to the Ferguson Reorganized School District R-2 on or before June 30, 1975 and neither the Berkeley nor Kinloch Districts shall from the date hereof enter

into any new contract, hire any new employee or assume any new obligation other than expressly authorized by this Order.

3. The designation of school board members required by paragraph 6 of the judgment of this Court of January 9, 1975, shall be reported to the Court on or before June 30, 1975. The new board shall have authority pursuant to Missouri Statutes to establish all rules and regulations for the governance and operation of the enlarged district subject to the provisions of this Order, however, the Board shall make no modification of the compensation provided in any contract of employment which has heretofore been entered into by the Berkeley School District, the Kinloch School District or the Ferguson Reorganized School District R-2.

4. The 1975 school tax levy shall be uniform throughout the new district and shall be set at a rate no higher than $5.38 per hundred dollars of assessed valuation. A levy of $5.38, inclusive of the amount necessary to service the total debt of the enlarged district, shall be deemed to have been approved by the voters for the purposes of Article 10, Section 11(c), Missouri Constitution.

5. The present superintendent of the Ferguson Reorganized R-2 District shall serve as superintendent of the enlarged district during the 1975-1976 school year. The present superintendents of the Berkeley and Kinloch School Districts shall serve as assistant superintendents of the enlarged district during the 1975-1976 school year. The superintendent of the enlarged district shall have authority pursuant to Missouri Statutes to make such administrative, procedural, personnel and fiscal changes as he deems necessary subject to the provisions of this Order.

6. Student and faculty desegregation required by the judgment of this Court of January 9, 1975 shall be delayed until

the commencement of the 1976-1977 school year, on or about September 1, 1976.

7. The defendants shall immediately commence all actions necessary to plan for successful student and faculty desegregation, including the establishment of a bi-racial committee pursuant to the provisions of the Revised Plan; the establishment of in-service training programs to prepare administrators, teachers, board members, students and the community for desegregation; the implementation of the community education requirements of the Revised Plan; the development of non-discriminatory regulations and procedures concerning student discipline; and the development of non-racial objective faculty evaluation criteria required by *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1970). The bi-racial advisory committee shall actively participate in these efforts and shall be assigned such other duties by the school board as may be necessary to prepare for effective desegregation.

8. The boards of education of the Kinloch and Berkeley School Districts may continue to function for the purpose of determining what actions they wish to take concerning further appeals in this case. The Ferguson Reorganized R-2 School District shall honor all contracts for legal expenses which the Kinloch and Berkeley boards of education may incur with respect to such appeals.

9. The Court retains jurisdiction of this action to insure effective implementation of desegregation and to enter such further orders from time to time as it deems necessary.

Dated this 7th day of June, 1975.

/s/ JAMES H. MEREDITH
United States District Judge

In the United States District Court for the
Eastern District of Missouri
Eastern District

United States of America, Plaintiff, vs. State of Missouri, et. al., Defendants.	Civil Action No. 71C555(1)

ORDER

Upon report of defendants Berkeley School District, Kinloch School District and Ferguson Reorganized School District R-2, the Court being fully advised in and of the premises and pursuant to judgment of January 9, 1975 as modified by order of June 7, 1975.

It Is Ordered that the following persons shall serve as members of the Board of Education of the defendant school district Ferguson Reorganized School District R-2 (Ferguson-Florissant School District) until the dates indicated and until their respective successors shall have been duly elected and qualified:

Ray E. Howell, to serve until the election of April, 1976

James T. Poor, to serve until the election of April, 1976

Floyd L. Sweeney, to serve until the election of April, 1977

Dorothy M. Cunningham, to serve until the election of April, 1977

Dallas W. Imbeau, to serve until the election of April, 1978

John O'Guin, to serve until the election of April, 1978

It Is Further Ordered that as of the 30th day of June, 1975 the offices on the Board of Education of the Ferguson Reorganized School District R-2 held by Patricia Johnson and Norman E. Wolff are hereby declared to be vacated and Dallas W. Imbeau and John O'Guin shall, within four days after June 30, 1975, be elected by the remaining members of the Board of Education of Ferguson Reorganized School District R-2 to fill those vacancies.

/s/ JAMES H. MEREDITH
United States District Judge

Dated: June 23, 1975.

In the United States District Court for the
Eastern District of Missouri
Eastern Division

United States of America,
Plaintiff,

v.

State of Missouri; Missouri State Board of Education; Arthur L. Mallory, Commissioner of Education; F. Burton Sawyer, President, Sidney R. Redmond, W.C. Banta, Elston J. Melton, Dale M. Thompson, Jack Webster, Eleanor B. Griffith, Harvey B. Young, Jr., Members of the Missouri State Board of Education; St. Louis County Board of Education, George W. Vossbrink, Superintendent, Robert S. Weinstock, President, Quinton C. Keller, Paul A. Leupold, Fred R. Small, Glenn A. Sweet, Clarence J. Wohlwend, Members of the St. Louis County Board of Education; Berkeley School District, Jack E. Bell, Superintendent; Kinloch School District, Arthur C. Shropshire, Superintendent; Ferguson-Florissant RII School District, Warren M. Brown, Superintendent,
Defendants.

Civil Action
No. 71C555(1)

COMPLAINT

The United States of America alleges that:

1. This action is brought by the Attorney General on behalf of the United States pursuant to Section 407 of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6, and the Fourteenth Amendment to the Constitution of the United States.

2. This Court has jurisdiction of this action under 28 U.S.C. 1345 and 42 U.S.C. 2000c-6.

3. Defendant Missouri State Board of Education is an agency of the State of Missouri and is responsible for the general supervision of public schools in the State of Missouri.

4. Defendant Missouri State Board of Education is comprised of F. Burton Sawyer, President, Sidney R. Redmond, W. C. Banta, Elston J. Melton, Dale M. Thompson, Jack Webster, Eleanor B. Griffith, Harvey B. Young, Jr., members.

5. Defendant Arthur L. Mallory is the Commissioner of Education and as such is the chief administrative officer of the Missouri State Board of Education. He resides in the State of Missouri.

6. Defendant St. Louis County Board of Education is an agency of the State of Missouri and is responsible under Missouri law for preparation of plans for reorganization of school districts in St. Louis County. Its principal place of business is in Clayton, St. Louis County, Missouri.

7. Defendant St. Louis County Board of Education is comprised of defendants Robert S. Weinstock, President, Quinton C. Keller, Paul A. Leupold, Fred R. Small, Glenn A. Sweet, Clarence J. Wohlwend, members.

8. George W. Vossbrink is St. Louis County Superintendent of Education and as such is the chief administrative officer of the St. Louis County Board of Education.

9. Defendant Berkeley School District is an agency of the State of Missouri and under Missouri law provides public education to eligible children residing within its geographic boundaries. The Berkeley School District is located in St. Louis County, Missouri.

10. Defendant Jack E. Bell is superintendent of the Berkeley School District and under the general supervision of the Board of Education is responsible for the operation of the Berkeley School District.

11. Defendant Kinloch School District is an agency of the State of Missouri and under Missouri law provides public education to eligible children residing within its geographic boundaries. It is located in St. Louis County, Missouri.

12. Defendant Arthur C. Shropshire is superintendent of the Kinloch School District and under the general supervision of the Board of Education is responsible for the operation of the Kinloch School District.

13. Defendant Ferguson-Florissant RII School District (hereinafter referred to as the Ferguson District) is an agency of the State of Missouri and under Missouri law provides public education to eligible children residing within its geographic boundaries. It is located in St. Louis County, Missouri.

14. Defendant Warren M. Brown is superintendent of the Ferguson School District and under the general supervision of the Board of Education is responsible for the operation of the Ferguson School District.

15. Defendants Berkeley School District, Kinloch School District, Ferguson School District, and their respective superintendents are joined in this action as necessary parties because the relief sought may affect their interests.

16. The Kinloch School District is attended by approximately 1245 black students and no white students, and is staffed by approximately 51 black teachers and 11 white teachers.

17. The Ferguson School District and the Berkeley School District are located adjacent to the Kinloch School District. The Ferguson School District is attended by approximately 338 black students, 18,612 white students and 80 other students, and is staffed by approximately 11 black teachers and 838 white teachers and 3 other teachers. The Berkeley School District is attended by approximately 954 black students, 4,428 white students and 20 other students, and is staffed by approximately 15 black teachers and 224 white teachers.

18. The Kinloch School District was created by the defendants State of Missouri, Missouri State Board of Education and St. Louis County Board of Education in 1938 as a school district designed to be attended exclusively by black students. Missouri law at that time required separate schools for white and black children.

19. The defendants State of Missouri, Missouri State Board of Education and St. Louis County Board of Education have continued to maintain the Kinloch School District as an all black district offering inferior educational opportunities and have failed and refused to take the steps necessary to provide equal educational opportunities for the black students in this school district. Creation and maintenance of the Kinloch School District in its present form have resulted in the denial to these black students of the equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution and Title IV of the Civil Rights Act of 1964.

20. There are other feasible methods of school district organization in St. Louis County which will result in equal educational opportunities being afforded those black students presently attending the Kinloch School District.

21. The Attorney General of the United States has certified that he has received a complaint in writing signed by a parent of minor black children residing in Kinloch alleging in effect that such children are being deprived of the equal protection of the laws in the operation of the public schools of Kinloch; that the signer of the complaint is unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief; that the Missouri State Board of Education and the St. Louis County Board of Education have been notified of the complaints; that he is satisfied that the Missouri State Board of Education and the St. Louis County Board of Education have had a reasonable length of time to adjust the conditions alleged in the complaints; and that in his judgment, the initiation of this action will materially further the orderly achievement of desegregation in public education. The certificate of the Attorney General is attached to this complaint.

22. Unless restrained by order of this Court the defendants will continue to maintain and operate a dual school system based on race, denying black children the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, plaintiff prays that this Court enjoin the defendants, and each of them, their officers, agents, employees, successors, and all persons in active concert or participation with them from discriminating against black children attending the public schools in the Kinloch School District and require them to take affirmative action to correct the effects of past discrimination based on race. Plaintiff further prays that the defendants be ordered forthwith to adopt and implement plans to accomplish this result.

Plaintiff further prays that this Court grant such additional relief as the interest of justice may require, together with the costs and disbursements of this action.

JOHN N. MITCHELL
Attorney General

DANIEL BARTLETT, JR.
United States Attorney

DAVID L. NORMAN
Assistant Attorney General

BRIAN K. LANDSBERG
Attorney
Department of Justice
Washington, D. C. 20530

DANIEL F. RINZEL
Attorney
Department of Justice
Washington, D. C. 20530

Certificate of the Attorney General of the United States

I, John N. Mitchell, Attorney General of the United States, hereby certify that I have received a complaint in writing signed by a parent of minor children alleging, in effect, that said children are being deprived of the equal protection of the laws in the operation of the public schools in the Kinloch School District, St. Louis County, Missouri; that this parent and minor children are residents of Kinloch; that I believe the complaints to be meritorious; that the signer of the complaint is unable, in my judgment, to initiate and maintain appropriate legal proceedings for relief; that the Missouri State Board of Education

and the St. Louis County Board of Education have been notified of the complaint, that I am satisfied that the said Missouri State Board of Education and St. Louis County Board of Education have had a reasonable time to adjust the conditions alleged in the complaints; and that in my judgment, the institution of this action will materially further the orderly achievement of desegregation in public education.

Signed this 31st day of August, 1971.

/s/ JOHN N. MITCHELL
Attorney General

SEPARATE ANSWER
Of Defendants Ferguson-Florissant School District and Warren M. Brown to Complaint

Come now defendants Ferguson-Florissant School District and Warren M. Brown and, for their separate answer to the complaint, state as follows:

1) The complaint fails to state a claim upon which relief can be granted against these defendants.

2) Deny each and every averment in paragraphs 1 and 2.

3) Admit the averments in paragraphs 3, 4, 5, 6, 7 and 8.

4) Admit the averments in paragraphs 9, 10, 11 and 12 that defendants Berkeley School District and Kinloch School District are in St. Louis County, Missouri and provide public education to eligible children residing within their respective boundaries, and that defendants Jack E. Bell and Arthur C. Shropshire are the respective superintendents of said districts. Deny that either of said districts is an agency of the State of Missouri within the meaning of any law applicable to plaintiff's

complaint and deny each and every other averment in said paragraphs 9, 10, 11 and 12.

5) Admit the averments in paragraph 13 that defendant Ferguson District is in St. Louis County, Missouri and provides public education to eligible children residing within its boundaries and state that the legal name of said district is "Ferguson Reorganized School District R-2". Deny the averment that said district is an agency of the State of Missouri within the meaning of any law applicable to plaintiff's complaint.

6) Admit the averments in paragraph 14 but state that defendant Warren M. Brown, an employee of said School District, is not a proper party to this action.

7) Deny each and every averment in paragraph 15.

8) Are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 16.

9) Are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 17 as they relate to defendant Berkeley School District but they admit the averments in said paragraph relating to defendant Ferguson District and admit that the Ferguson and Berkeley districts are adjacent to the Kinloch District.

10) Deny each and every averment in paragraphs 18, 19 and 20 and state that, if said averments are true, neither of these defendants had any part in the creation of either the Kinloch or Berkeley District and neither has any authority or legal power with respect to the maintenance or continuation of either of said districts; there is no action this district can take or be compelled to take to correct any alleged violations by any other party hereto of any provision of law or constitution.

11) Are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 21.

12) Deny each and every averment in paragraph 22.

13) Defendant Kinloch School District was organized by vote of the people under the laws of the State of Missouri as School District No. 18 (Kinloch School District), St. Louis County, Missouri, in the year 1910 and has been a school district under Missouri law continuously since that date; defendant School District of Berkeley was organized as a city school district in 1937 and has continued as a six-director school district since that date; both said districts were organized by voters residing within their boundaries and neither the Ferguson District nor its superintendent was any way instrumental or involved in such organization.

14) The defendant Ferguson District has not segregated the races within its schools, has not gerrymandered its attendance areas, nor has it confined blacks to particular schools, nor has it engaged in any procedure to block the process of integration, and its system of schools is and has been at all times a non-segregated and unitary non-racial system; it does not maintain or operate a dual school system based on race and does not deny black children the equal protection of the law guaranteed by the Fourteenth Amendment to the U. S. Constitution.

15) The existence of defendant Kinloch School District is not the result of state-imposed segregation under the laws of the State of Missouri; the existence of all three defendant school districts is not segregation under a state-enforced dual school system, and the creation and maintenance of the Kinloch School District has not resulted in denial to black students therein the equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution and Title VI of the Civil Rights Act of 1964.

16) To compel any change in the boundaries of Ferguson District would be in violation of the Tenth Amendment to the

Constitution of the United States; federal law and federal courts cannot be used in this manner to establish authority over the operation of school districts in the State of Missouri; the operation of the Ferguson District, not being in violation of the Fourteenth Amendment to the Constitution of the United States, or of federal statutes, is a matter solely within state law and state power, having been reserved to the State of Missouri under the Tenth Amendment to the Constitution of the United States.

17) Any forced merger of defendant Ferguson District with any other school district through the federal courts would be in violation of the Fifth Amendment to the Constitution of the United States in that it would deprive the resident property owners of said School District of property without due process of law and would constitute the deprivation of property rights without due process of law with respect to contract rights under contracts between said School District and those persons, firms and corporations who have purchased bonds and other obligations of this District in reliance on the assessed valuation, tax rates, expenditures, operation, stability and resources of this District and would constitute the taking of private property without just compensation.

18) Because this defendant school district is not in violation of the Fourteenth Amendment to the Constitution or of federal statutes, any order or decree compelling it to merge in whole or in part with any other school district, or changing its boundaries in any manner, would constitute a violation of the due process clause of the Fifth Amendment to the United States Constitution.

19) Neither of these defendants is a proper party to this action and the complaint should be dismissed as to them.

20) If this school district has any interest in the subject matter of plaintiff's complaint so does every other one of the

twenty-four (24) other public school districts in St. Louis County and they should be joined as parties hereto pursuant to Rule 19 of the Rules of Civil Procedure.

Wherefore, these defendants pray that the complaint be dismissed as to these defendants; that the relief sought by plaintiff be denied as to these defendants; and that these defendants go hence with their costs.

FLYNN & PARKER
By NORMAN C. PARKER
Attorneys for defendants Ferguson-
Florissant School District and
Warren M. Brown
319 North Fourth Street
St. Louis, Missouri 63102
231-8282

AMENDED ANSWER OF DEFENDANTS KINLOCH SCHOOL DISTRICT AND ARTHUR C. SHROPSHIRE

Comes now Kinloch School District and Arthur C. Shropshire, Superintendent of Kinloch School District, defendants named in Plaintiff's Complaint and for Amended Answer therein state:

1. That these defendants admit the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 20, 21, and 22 of said Complaint.

2. That these Defendants deny the allegations of Paragraph 16 of said Complaint that Kinloch School District has no white students and alleges that Kinloch School District has 4 white students attending the public schools of said district and admits the other allegations of Paragraph 16.

3. That these Defendants have no knowledge nor belief relative to the allegations of Paragraph 18 of said Complaint and therefore deny the same.

4. That these Defendants deny the allegations of Paragraph 19 of said Complaint that Kinloch School District is an all black school district; and allege that said district has 4 white students; these Defendants deny that Kinloch School District offers "inferior educational opportunities" in all respects and aver that "inferior educational opportunities" is a qualitative philosophy, and that if said philosophy is based on money expenditures alone, then Kinloch School District does offer "inferior educational opportunities" to some school districts in St. Louis County and in the State of Missouri; but that, if other aspects of said philosophy are considered, such as

(a) the close proximity or neighborhood nature of schools to students;

(b) motivation of students resulting from association with teachers familiar with the students environment and his problems, and

(c) the opportunities of students to obtain vocational and technical training at an early age in their school experience; then it is not felt that the Kinloch School District offers "inferior educational opportunities" as alleged by Plaintiff.

KINLOCH SCHOOL DISTRICT
By: MARVIN S. WOOD
Attorney for Kinloch
School District
230 South Bemiston Avenue
Suite 409
St. Louis, Missouri 63105
863-2230

SEPARATE ANSWER OF DEFENDANTS BERKELEY SCHOOL DISTRICT AND JACK E. BELL TO COMPLAINT

Come now defendants Berkeley School District and Jack E. Bell and, for their separate answer to the complaint filed herein, state:

1. That they admit jurisdiction in this Court, as alleged in paragraphs 1 and 2 thereof.

2. That they admit the allegations in paragraphs 3 through 8 thereof.

3. That they admit the allegations in paragraph 9 thereof but state that the legal name of this corporate defendant is "School District of Berkeley" rather than "Berkeley School District."

4. That they admit the allegations in paragraph 10 thereof but state that defendant Jack E. Bell, an employee of defendant School District of Berkeley, is not a proper party to this action.

5. That they admit the allegations in paragraphs 11 and 13 thereof and are without knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 12 and 14 thereof.

6. That they deny the allegations in paragraph 15 thereof.

7. That they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 thereof.

8. That they are without knowledge or information sufficient to form a belief as to the truth of the allegations in para-

graph 17 as they relate to defendant Ferguson-Florissant School District but they admit the allegations in said paragraph relating to defendant School District of Berkeley.

9. That they deny the allegations in paragraphs 18, 19 and 20 thereof.

10. That they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 thereof relating to the complaint received by the Attorney General and deny all other allegations in said paragraph 21.

11. That they deny the allegations contained in paragraph 22 thereof.

For further answer, these defendants state:

12. That defendant Kinloch School District was organized by vote of the people under the laws of the State of Missouri as School District No. 18 (Kinloch School District), St. Louis County, Missouri, in the year 1910 and has been a school district under Missouri law continuously since that date; that defendant School District of Berkeley was organized as a city school district in 1937 and has continued as a six-director school district since that date; that both said districts were organized by voters residing within their boundaries and that neither the State Board of Education nor the St. Louis County Board of Education was any way instrumental in such organization.

13. That from and since its organization as a public school district, defendant School District of Berkeley has had within its boundaries black families with children of school age; that prior to 1954 such children were tuition students in schools of Kinloch School District for the reason that separation of

races was required under Missouri law; that since 1954, all such students have attended the schools of said School District of Berkeley; that the Board of Education of the School District of Berkeley extended the boundaries of said District in 1960 to include within such boundaries the area of the Scudder School District, St. Louis County, Missouri, theretofore an all-black district and that, since that date, all children in said former district have attended schools in this defendant District.

14. That defendant School District of Berkeley has not segregated the races within its schools, has not jerrymandered its attendance areas, nor has it confined blacks to particular schools, nor has it engaged in any other procedure to block the process of integration, and that its system of schools is a unitary non-racial system.

15. That the existence of defendant Kinloch School District as a black school district is not the result of state-imposed segregation under the laws of the State of Missouri, that the existence of defendants Ferguson-Florissant School District, School District of Berkeley and Kinloch School District is not segregation under a state-enforced dual school system, and that the creation and maintenance of the Kinloch School District has not resulted in denial to black students therein the equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution and Title VI of the Civil Rights Act of 1964.

16. That to compel defendant School District of Berkeley to merge with Kinloch School District and/or with Kinloch School District and Ferguson-Florissant School District would be in violation of the Tenth Amendment to the Constitution of the United States and that federal law and federal courts cannot be used in this manner to establish authority over the operation of school districts in the State of Missouri; that the

operation of the School District of Berkeley, not being in violation of the Fourteenth Amendment to the Constitution of the United States, or of federal statutes, is a matter solely within state law and state power, having been reserved to the State of Missouri under the Tenth Amendment of the Constitution of the United States.

17. That any forced merger between defendant School District of Berkeley and any other school district through the federal courts would be in violation of the Fifth Amendment to the Constitution of the United States in that it would deprive the resident property owners of the School District of Berkeley of property without due process of law and would constitute the deprivation of property rights without due process of law with respect to contract rights under contracts between the School District of Berkeley and those persons, firms and corporations who have purchased bonds and other obligations of this District in reliance on the assessed valuation, stability and resources of this District and would constitute the taking of private property without just compensation.

18. That because defendant School District of Berkeley is not in violation of the Fourteenth Amendment to the Constitution or of federal statutes, any order or decree compelling defendant School District of Berkeley to merge with Kinloch School District and/or with Kinloch School District and Ferguson-Florissant School District, or in any manner changing the composition of the School District of Berkeley would constitute an unconstitutional and invidious racial classification in violation of the due process clause of the Fifth Amendment to the United States Constitution.

19. That no cause of action is stated against defendant School District of Berkeley or defendant Jack E. Bell and that defendant Jack E. Bell is not a proper party to this action.

Wherefore, having fully answered, these defendants pray

that they be dismissed hence with their costs and that the relief sought by plaintiff be denied.

ZIERCHER, TZINBERG, HUMAN &
MICHENFELDER
By: ERWIN TZINBERG
By: ROBERT HICKEL
Attorneys for Named Defendants
130 S. Bemiston Avenue, Suite 405
Clayton, Missouri 63105
727-5822

ANSWER
of Defendants, State of Missouri, Missouri State Board of Education, Its Members, and Arthur L. Mallory, Commissioner of Education

Defendants, the State of Missouri, Missouri State Board of Education, its members, and Arthur L. Mallory, Commissioner of Education, for their answer to plaintiff's complaint herein state as follows:

1. They admit the jurisdiction of this Court as alleged in paragraphs 1 and 2 of plaintiff's complaint.

2. Answering paragraph 3 of plaintiff's complaint, these defendants state that the State Board of Education is an agency of the State of Missouri with the limited statutory powers set forth in Chapter 161, RSMo 1969, particularly in Section 161.092, RSMo 1969, and that the State Board of Education has no power to reorganize school districts, to consolidate school districts or to change their boundaries in any fashion whatsoever.

3. These defendants admit that the individuals named in paragraph 4 of plaintiff's complaint are the members of the

Missouri State Board of Education and state further that Sidney R. Redmond was elected President of the State Board of Education on September 23, 1971.

4. These defendants admit the allegations of paragraphs 5, 6, 7, 9, 11, 12, and 15.

5. Answering paragraph 8 of plaintiff's complaint, these defendants admit that George W. Vossbrink in St. Louis County Superintendent of Education with powers and duties described in Chapter 179, RSMo 1969, particularly in Section 179.040, RSMo 1969, and, in addition, is Secretary of the St. Louis County Board of Education as provided in Section 162.121, RSMo 1969.

6. Answering paragraphs 10, 12 and 14, these defendants admit that the named individuals are superintendents of the defendant school districts and, as such, they are responsible for the administration of the districts.

7. These defendants admit that in the "Fall 1970 Elementary and Secondary School Civil Rights Survey" (Form OS/CR-101) filed with the United States Department of Health, Education and Welfare by the Kinloch School District the racial breakdown of that district's student body and instructional staff is shown as alleged by plaintiff in paragraph 16.

8. Those defendants admit that the R-2 Ferguson School District and the School District of Berkeley adjoin the Kinloch School District and that the "Fall 1970 Elementary and Secondary School Civil Rights Survey" (Form O/SCR-101) filed with the United States Department of Health, Education and Welfare by the School District of Berkeley, shows the racial breakdown of that district's student body and instructional staff approximately as alleged by plaintiff in paragraph 17 of its complaint but these defendants are without knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 17 of plaintiff's complaint.

9. These defendants admit that in 1938 the Missouri Constitution required separate schools for black and white children but deny each and every other allegation of paragraph 18. Further answering, these defendants specifically deny that they created the Kinloch School District "as a school district to be attended exclusively by black students".

10. Answering paragraph 19 of plaintiff's complaint, these defendants state that the Kinloch School District, in its present form, was not created by these defendants; that these defendants are and have been without legal power to alter the configuration of the present Kinloch School District, and that these defendants are without knowledge or information sufficient to form a belief as to the other allegations contained in paragraph 19 of plaintiff's complaint.

11. Answering paragraph 20 of plaintiff's complaint, these defendants admit that there are other feasible methods of school district organization which would result in meaningful improvement in the educational opportunity of children attending the Kinloch School District.

12. These defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21.

13. These defendants deny the allegations of paragraph 22.

Wherefore, having fully answered, these defendants pray that the relief sought by plaintiff in this action be denied and that these defendants go hence with their costs.

JOHN C. DANFORTH
Missouri State Attorney General
By D. BROOK BARTLETT
Assistant Attorney General

ANSWER

of Defendants George W. Vossbrink, Superintendent, St. Louis County Board of Education, Fred R. Small, President, Robert S. Weinstock, Quinton C. Keller, Paul A. Leupold, Glen A. Sweet, and Clarence J. Wohlwend, Members of the St. Louis County Board of Education.

First Defense

The complaint fails to state a claim against Defendants upon which relief can be granted.

Second Defense

These defendants admit the allegations in paragraphs 6, 8, 16, 17, and 21; deny the allegations in paragraphs 18, 19, 20, and 22.

These defendants deny the allegations of paragraphs 1 and 2, and for further answer state that neither these defendants nor the State Board and Commissioner is a school board as defined in 42 U.S.C. 2000c, and that the Complaint therefore discloses on its face that the Attorney General of the United States lacks standing and authority to bring this action and that this Court lacks jurisdiction over this action, since no written complaint has been or could be filed with the Attorney General charging discrimination by a school board, and since no notice of any such complaint was given to any school board, each as required before suit by 42 U.S.C. 2000c-6.

As to paragraphs 3, 4, 5, 9, 10, 11, 12, 13, 14, and 15 these defendants state that such paragraphs relate to matters not forming a part of any cause of action between the United States of America and these defendants, but relate solely to the cause of action claimed by the United States of America against other defendants, and these defendants accordingly incorporate the answers of the concerned defendants to each such paragraph.

As to paragraph 7, admit that the named individuals constitute the defendant St. Louis County Board of Education, and state further that Fred R. Small is now its president.

Third Defense

Defendants and each of them state that they had no legal nor actual role in the creation of the Berkeley and Kinloch School Districts, nor any role in the present maintenance of such districts; that the sole relevant power granted the Board of Education and the Superintendent of Schools by Missouri Law is to recommend plans of reorganization of their school districts; that virtually the first official act of St. Louis County Board of Education after being given authority to recommend plans of reorganization was to recommend a plan of reorganization that would have consolidated the Kinloch School District with several other school districts, including the Ferguson School District, which now constitutes part of Defendant Ferguson R-2 District, the Berkeley School District, which now constitutes a portion of Defendant Berkeley School District, the Scudder School District, which now constitutes a part of Defendant Berkeley School District, and six other small school districts, all of which now constitute a part of the Hazelwood School District; that such proposed reorganized district was presented to the electorate, as required by Missouri Law, then and now, on October 29, 1949; that the proposed consolidated district was rejected by the voters of the proposed district.

Wherefore, having fully answered, these Defendants pray that they may go hence at Plaintiff's cost.

GEORGE F. GUNN, JR.
St. Louis County Counselor
By ANDREW J. MINARDI
Assistant County Counselor
Attorney for Defendants Superintendent of Schools of St. Louis County and St. Louis County Board of Education
County Government Center
7900 Forsyth Boulevard
Clayton, Missouri 63105
889-2042

A PLAN
For School Desegregation as Ordered by the United States District Court, Eastern District of Missouri, in Civil Case 71 C 555 (1)

INTRODUCTION

On August 27, 1973, in Civil Case 71 C 555 (1), *U.S.A. v. State of Missouri, et al.*, the United States District Court of the Eastern District of Missouri ordered the Missouri State Board of Education and the St. Louis County Board of Education to prepare, within 60 days, a plan which would "disestablish the racially dual system of school districts in St. Louis County and eliminate the continuing effects of past discrimination against, and denial of equal educational opportunities to, students in the Kinloch District." The defendant local school districts and officials were ordered to cooperate with the

State and County defendants in the development of such a plan. On October 25, 1973, the Court, based on a motion filed by the State defendant, with the concurrence of all other defendants, granted a 30-day extension of time for the preparation and filing of the plan. In compliance with the August 27, 1973, Order of the Court, the State and County defendants filed the required school desegregation plan with the District Court on November 21, 1973.

Between November 21, 1973, and October 4, 1974, numerous conferences have been conducted by the Court with the attorneys of record in this case and subsequent orders and directives have been issued by the Court relative to alterative desegregation plans and supplementary information in an effort to forge an appropriate remedy. Parties in the suit have filed timely responses. On October 4, 1974, the Court issued an additional Order which reads, in part, as follows:

> "It Is Hereby Ordered that the State Board of Education shall on or before November 15, 1974, file with the Court and mail a copy to all parties an up-dated plan containing the enrollment for the school year 1974-75. This plan shall envision the annexation by Ferguson-Florissant School District of the Kinloch and Berkeley Districts. In view of the current inflation and financial condition of the country, no new buildings shall be built and busing of students shall be at a minimum. Prior to the drawing of this plan, the State Board of Education shall invite the administrators of all three districts and of the St. Louis County Board of Education to Jefferson City, Missouri, for the purpose of consulting them as to the most practical solution and suggestions for the drawings of a workable plan."

Pursuant to this latest Order and prior to the drawing of this plan, the administrators of all three districts and of the St. Louis County Board of Education came to Jefferson City

on October 16, 1974, for consultation and suggestions relative to a workable plan. The State Board hereby expresses appreciation to these officials for their cooperation and assistance. In further compliance with the October 4, 1974, Court Order, the State Board of Education respectfully submits this updated plan which incorporates the Court's directives and suggestions.

The following general guidelines were utilized in the development of this plan:

1. Provide for equitable treatment of majority and minority pupils, certificated personnel, and support staff in the desegregation process.
2. Maximize stability in terms of pupil assignments and minimize additional transportation for desegregation purposes.
3. Provide for equality of educational opportunities.
4. Assure administrative feasibility and adequate financing.
5. Arrange for appropriate governance of the unitary system.
6. Observe safety factors in respect to pupil transportation and building facilities.
7. Maintain the concept of neighborhood schools and community centers, where possible.
8. Utilize present classroom space and building facilities to best advantage.
9. Maintain the local board of education's autonomy in decision making and flexibility in administrative procedures to every extent possible.

* * * * * * *

Part I

ORGANIZATIONAL STRUCTURE

Determining the geographical area and/or the school districts which necessarily had to be involved in providing a satisfactory remedy for the discrimination found by the Court represented a major consideration for the State and County Boards of Education. A number of optional organizational arrangements were carefully studied and analyzed. They included the following:

1. Assign Kinloch high school pupils to other districts in St. Louis County on a tuition basis.
2. Divide Kinloch District—attach 80% to Ferguson District and 20% to Berkeley District.
3. Merge Kinloch District with Berkeley District.
4. Merge Kinloch District with Ferguson District.
5. Develop a model "magnet" school in Kinloch with voluntary enrollments from other districts to achieve desegregation.
6. Merge Kinloch, Berkeley, and Ferguson School Districts into one district or administrative unit.
7. Merge the nine north St. Louis County districts into one district or administrative unit.
8. Merge all districts in the county into one or maybe five or six districts.
9. Merge Kinloch, Berkeley, Ferguson Districts and a small portion of the Hazelwood District.

Following careful study of the strengths and weaknesses of the alternative arrangements noted above, the State and County Boards of Education concluded that Option No. 6 provides the

most feasible organizational structure—administratively, educationally, and financially—for desegregating the Kinloch school system. It is recommended, therefore, that the Court order the merger of Kinloch, Berkeley, and Ferguson-Florissant School Districts into one administrative unit or school district with all of the rights and responsibilities granted six-director school districts under the statutes of Missouri, *except as specifically provided in this Plan.* It is further recommended that the new unitary system be designated by the Court as School District CR-I, St. Louis County, Missouri. The board of education, following the establishment of the district, may adopt a *name* for the district as provided in Section 162.311, RSMo., but the district *number* (CR-I) shall be retained in accordance with regulations of the State Board of Education.

The recommended School District CR-1 (Kinloch, Berkeley, and Ferguson-Florissant combined) is approximately 28 square miles in area. It is located in the northern part of St. Louis County adjacent to the Lambert-St. Louis International Airport. The total assessed valuation, for school taxing purposes, amounted to $295,837,480 for the 1973-74 school year. The proposed CR-I district enrolled 21,778 students in September, 1974, 84 percent white and 16 percent nonwhite. Based on 1973-74 data, assessed valuation per pupil in average daily attendance amounted to $14,358. (See Table I.) This compares favorably with the State average assessed valuation per pupil in A.D.A. of $12,457 for the same year. More detailed information relative to pupils, staff, facilities, and financial resources of the recommended district will be reflected in other parts of this Plan.

TABLE I

Area, Assessed Valuation (A./V.), Average Daily Attendance (A.D.A.), and A./V. Per A.D.A. of the Kinloch, Berkeley, and Ferguson-Florissant School Districts*

(1973-74 Data)

Component Districts	Area** (Sq. Miles)	Assessed Valuation	A.D.A.	A./V. Per A.D.A.
Kinloch	1.0	$ 4,129,420	998	$ 4,138
Berkeley	10.8	111,192,550	3,906	28,467
Ferguson-Florissant	16.0	180,515,510	15,701	11,497
When Combined	27.8	$295,837,480	20,605	$14,358

* Source: Annual Report of the St. Louis County Public Schools.

** Source: Reported by component districts.

The organizational structure proposed herein has the necessary requisites to provide the Kinloch students as well as all other students of the component districts "with educational opportunities equivalent to the opportunities provided students in the immediately surrounding school districts."

It is recommended that the new district, CR-I, be established by Court Order and become operational on or before March 15. This would provide the board of education time to prepare for the ensuing school year beginning July 1 and would eliminate the expense of conducting annual school elections (in April) in the component districts.

Addendum to Organizational Structure Proposal Pursuant to Court Order Dated October 4, 1974

The Missouri General Assembly has established three methods for the merging of local school districts: (1) by Annexation (Section 162.441, RSMo. 1969), (2) by Consolidation

(Sections 162.223 through 162.251, RSMo. 1969), and (3) by Reorganization (Sections 162.101 through 162.201, RSMo. 1969). Each method, when successfully utilized, combines two or more districts into one administrative unit or school district although the procedures for attaining this end result are quite different. It is generally recognized that merger by annexation is the simplest method.

The Court has ordered, on October 4, 1974, that this updated Plan "shall envision the annexation by Ferguson-Florissant School District of the Kinloch and Berkeley Districts." The effect of a merger of this type is set out in Section 162.441, RSMo., and related statutes along with decisions of various appellate courts. Basically, the law provides that from the date of annexation the boundary lines of the receiving school district (in this case Ferguson-Florissant) shall be changed to include the annexed district(s) (Berkeley and Kinloch) and that all property and money of the annexed district(s) shall immediately pass into the possession of the board of education in the receiving district. The board of the receiving district is responsible for governing the enlarged district and its membership remains intact until the elected members terms expire. The enlarged Ferguson-Florissant District, following such a merger, would continue to be designated as School District R-2 of St. Louis County but the board of education would be authorized to adopt a new name for the district as provided in Section 162.311, RSMo. The receiving district would assume all assets and liabilities of the annexed districts and would continue to have all of the rights and responsibilities granted six-director districts under the statutes of Missouri except as may be otherwise ordered by the Court.

The school tax levy of the receiving district, through the years, has been applied to the annexed areas following the effective date of annexation in accordance with Article X, Section 3, of the Missouri Constitution. However, the 1972 decision of the Missouri Court of Appeals, Kansas City District, in *State of Missouri ex rel. Ft. Osage School District v. Bernice Conley*, 485 S.W. 2d 469, leaves some question in this regard.

* * * * * * * *

Financing

The provision of free public education in a nondiscriminatory manner to all school-age children in any school district is dependent, to a large degree, upon adequate funding from local, state and federal sources. Since this proposed district (CR-I) will be eligible to receive state and federal funds as other school districts in Missouri, in accordance with the laws and regulations pertaining thereto, the capability of the district to produce sufficient local revenue on a reasonable tax levy to support a quality educational program must be a primary consideration. It has been established in Part I, Table I, that the average assessed valuation per pupil in average daily attendance for the combined districts of Kinloch, Berkeley, and Ferguson-Florissant was $14,358, based on 1973-74 data. This was $1,901 per pupil above the state average for the same year and would seem to provide a reasonable tax base for the support of schools in the proposed unitary system.

The Missouri Constitution, in Article X, Section 3, provides that "Taxes may be levied and collected for public purposes only, and *shall be uniform upon the same classes of subjects within the territorial limits of the authority levying the tax*." (The Fort Osage Case, referred to on page 7 may have relevance in this regard.) Various factors must be considered in arriving at a proposed tax levy for school purposes in the recommended district. The following tables, II through VIII, provide pertinent information in this regard.

TABLE II

Pupil Enrollments in Component Districts, by Years and Totals

Component Districts	September 1971*	September 1972*	September 1973*	September 1974**
Kinloch	1,130	1,069	975	979
Berkeley	4,942	4,678	4,426	4,243
Ferguson-Florissant	18,821	18,085	17,205	16,556
When Combined	24,893	23,832	22,606	21,778

* Source: Annual Reports of the St. Louis County Public Schools.

** Reported by Component Districts.

The preceding table reflects a declining enrollment trend in the combined districts at a rate of from four to five percent annually. On this basis, the total enrollment of the proposed district is projected to be 20,800 in September, 1975.

TABLE III

A.D.A. of Component Districts, by Years and Totals*

Component Districts	A.D.A. 1970-71	A.D.A. 1971-72	A.D.A. 1972-73	A.D.A. 1973-74
Kinloch	1,154	1,084	1,058	998
Berkeley	4,714	4,438	4,153	3,906
Ferguson-Florissant	16,986	16,936	16,473	15,701
When Combined	22,854	22,458	21,684	20,605

* Source: Annual Reports of the St. Louis County Public Schools.

Utilizing the data in Tables II and III above, it can be noted that the average daily attendance for these districts in the years reported ranged from 87 to 91 percent of their September enrollments. The total A.D.A. for the new district in 1974-75 is estimated at 19,330.

The assessed valuation for local taxation purposes in the proposed district is increasing as shown in the following table.

TABLE IV

Assessed Valuation of Component Districts, by Years and Totals*

Component Districts	A./V. October, 1972	A./V. October, 1973	A./V. October, 1974
Kinloch	$ 4,223,590	$ 4,129,420	$ 4,361,770
Berkeley	111,377,586	111,192,550	119,899,460
Ferguson-Florissant	178,344,340	180,515,510	185,280,410
When Combined	$293,945,516	$295,837,480	$309,541,640

* Source: Annual Reports of the St. Louis County Public Schools.

The current (1974-75) tax rates for $100 assessed valuation, by funds or purpose, for the component districts in the proposed unitary system are set out below.

TABLE V

Tax Levies of Component Districts, by Funds and Totals*

Component Districts	Teachers	Incidental	Building	Debt Service	Total Levy
Kinloch	$1.44	$1.90	$.40	$1.23	$4.97
Berkeley	2.25	1.20	.15	.20	3.80
Ferguson-Florissant	2.65	1.29	.59	.85	5.38

* Source: Reported by Component Districts.

TABLE VI

Bonded Indebtedness of Component Districts, by Years and Totals*

Component Districts	Bonds Unpaid 6-30-73	Bonds Issued and Sold	Bonds Paid During Year	Bonded Indebtedness 6-30-74
Kinloch	$ 200,000	None	$ 25,000	$ 175,000
Berkeley	4,370,000	None	290,000	4,080,000
Ferguson-Florissant	17,155,000	None	900,000	16,255,000
When Combined	$21,725,000	None	$1,215,000	$20,510,000

* Source: Annual Report of St. Louis County Public Schools.

The total bonded indebtedness of $20,510,000 on June 30, 1974, as shown above, represents 6.9 percent of the assessed valuation ($295,837,480) of the proposed district for that year. Under Missouri statutes (10 percent bonding limitation) the district would have an unencumbered bonding capacity of $9,073,748 in 1974-75, not including 10 percent of the state assessed utilities valuation.

TABLE VII

Value of Buildings, Sites, and Equipment By Component Districts and Total*

(June 30, 1974)

Component Districts	Reported Values
Kinloch	$ 1,609,000
Berkeley	12,499,856
Ferguson-Florissant	35,898,584**
When Combined	$50,007,440

* Source: Annual Secretary of Boards' Reports to State Department of Education and County Superintendent.

** Does not include the value of school buses.

TABLE VIII

(Revised as of December 31, 1974)

Combined Balances, Receipts, Expenditures, and Budget Projections of Component Districts, by Years

	1972-73 (Actual)*	1973-74 (Actual)*	1974-75 (Budgeted)**	1975-76 Budget Projection***	
Receipts					
Balances—Beginning of Year	$ 6,717,159.00	$ 5,230,128.20	$ 5,038,378.29	$ 4,349,011.29	
Local Receipts	15,674,721.48	16,223,852.04	16,511,430.00	18,653,135.00/	1
County Receipts	1,005,437.00	1,154,856.59	1,405,277.00	1,545,804.00/	2
State Receipts	7,986,519.83	8,243,157.61	8,169,413.00	8,094,694.00/	3
Federal Receipts	1,556,181.31	1,670,259.34	1,543,585.00	1,543,585.00/	4
Total Revenue Receipts	$26,222,859.62	$27,292,125.58	$27,629,705.00	$29,837,218.00	
Non-revenue Receipts	14,678.75	8,008.40	107,099.00	107,099.00/	5
Receipts from Other Dists.	5,698.50	4,282.50	—0—	—0—	
Gross Receipts	$26,243,236.87	$27,304,416.48	$27,736,804.00	$29,944,317.00	
Gross Receipts and Balance	$32,960,395.87	$32,534,544.68	$32,775,182.29	$34,293,328.29	
Expenditures					
Administration					
Salaries	$ 603,083.49	$ 604,513.86	$ 671,034.00	$ 711,967.00/	6
Other Expenses	239,732.20	319,616.66	249,100.00	240,275.00/	7
Instruction					
Salaries	14,930,285.01	15,819,244.44	16,076,072.00	17,379,141.00/	8
Other (Except Supplies)	575,512.99	529,603.20	624,663.00	655,896.00/	9
Supplies for Teaching	791,191.89	660,026.02	777,333.00	816,199.00/	10
Attendance Services	7,204.51	18,748.84	9,450.00	10,026.00/	11
Health Services	99,395.14	106,162.73	113,795.00	120,736.00/	12
Pupil Transportation	334,379.31	357,538.22	474,772.00	488,398.00/	13
Operation of Plant	2,039,536.37	1,807,347.37	1,904,436.00	2,035,190.00/	14
Maintenance of Plant	735,954.56	1,091,617.54	1,190,318.00	1,275,688.00/	15
Fixed Charges	1,523,136.08	1,647,561.51	1,746,651.00	1,923,899.00/	16
Total Current Expend.	$21,879,411.55	$22,961,980.39	$23,837,774.00	$25,657,415.00	
Food Services	1,403,876.41	1,499,948.67	1,517,838.00	1,517,838.00/	17
Student Body Activities	312,177.77	290,973.96	285,300.00	285,300.00/	18
Community Services	286,327.94	262,962.80	238,272.00	238,272.00/	19
Capital Outlay	1,711,914.04	362,322.38	426,010.00	491,010.00/	20
Debt Services	2,136,559.96	2,117,978.19	2,120,977.00	2,133,583.00/	21
Payments Between Dists.	—0—	—0—	—0—	—0—	
Gross Expenditures	$27,730,267.67	$27,496,166.39	$28,426,171.00	$30,323,418.00	
Recapitulation					
Beginning Balance	$ 6,717,159.00	$ 5,230,128.20	$ 5,038,378.29	$ 4,349,011.29	
Gross Receipts	26,243,236.87	27,304,416.48	27,736,804.00	29,944,317.00	
Gross Receipts and Balance	32,960,395.87	32,534,544.68	32,775,182.29	34,293,328.29	
Gross Expenditures	27,730,267.67	27,496,166.39	28,426,171.00	30,323,418.00	
Ending Balance	$ 5,230,128.20	$ 5,038,378.29	$ 4,349,011.29	$ 3,969,910.29	

* Source: Annual Secretary of Board's Report to Department of Elementary and Secondary Education and County Superintendent.

** Source: Combined 1974-75 budgets of component districts.

*** The numbered items in this column are explained on next page under *Rationale* . . .

Rationale Used to Determine Budget Projection—1975-76

The following rationale for projecting receipts and expenditures for the 1975-76 year is based upon the premise that such projections should not, in any way, restrict the board of education for the merged district from making necessary adjustments to the budget projections based upon more current information. In developing the budget projections for the merged district for the 1975-76 year, the objective was to determine the financial feasibility of operating the proposed district within certain assumptions and parameters and utilizing data supplied by the districts. Explanations relate to the same numbered items in the 1975-76 Budget Projection in Table VIII.

1. Local Receipts—Based on the average increase in assessed valuation from 1972 to 1973 and 1973 to 1974, the 1974 assessed valuation was projected to increase 2.4%, but the districts will lose $5,140,900 in assessed valuation due to repeal of personal property tax on household goods. Resultant assessed valuation projected to $311,706,358. A total tax rate of 538 cents and a collection rate of 96% was used in calculating current taxes. Local receipts other than current taxes were increased 5% above 1974-75 school district budgets. The merged district should realize more interest on deposits than realized by three separate districts but such an increase is not included in the projection. The loss of approximately $107,000 in personal intangible taxes due to statutory changes was taken into account.

2. County Receipts—Based on historical trends, county receipts were increased 10%.

3. State Receipts—The formula for distribution of state funds to school districts through the minimum guaran-

tee portion of the school foundation program is affected by changes in the assessed valuation and the average daily attendance in the school districts of the state. This fact would also change the amount of entitlement to the merged district of state funds under the minimum guarantee portion of the school foundation program. Anticipating an additional appropriation by the General Assembly for the 1975-76 year of $25 million, it is estimated that the merged district would receive approximately $380,000 less than the separate districts are apportioned during 1974-75. However, the state receipts for 1975-76 were adjusted further due to the underbudgeting of state receipts for 1974-75 by the three districts amounting to $305,481. In arriving at the budget projection for state receipts for 1975-76, state monies from Exceptional Pupils and Pupil Transportation were not increased. It is quite likely that the merged district would realize more state revenue due to increased services in these two areas.

4. Federal Receipts—No change from 1974-75 budgets.

5. Non-Revenue Receipts—No change from 1974-75 budgets.

6. Administration, Salaries—Salaries for central office personnel were budgeted according to indicated expenditures in 1974-75 budgets with an additional amount provided for salary adjustments. To allow all teaching personnel in the merged district to advance to the next earned step for 1975-76 based on the 1974-75 Berkeley salary schedule would mean an increase of 6.1% in expenditures for this purpose. The budgeted amount for salaries for 1974-75 for central office personnel was increased 6.1% to provide the amount for salary adjustments for 1975-76.

7. Administrative-Other Expenses—Administrative and board expenses for public relations, elections, board supplies for superintendent's office, advertising, legal services, audit, board expenses, superintendents and central office personnel expenses, and teacher recruitment were reduced 75% from the amounts set forth in 1974-75 budgets for Kinloch and Berkeley. A sum of $25,000 was included in the projected budget to provide for staff in-service work brought about by the merger, and to provide supportive services for the advisory committee.

8. Instruction-Salaries—All instructional personnel employed by the three districts for the 1974-75 year were included in the projection. A cost of $573,800 was included in the projection to place all teachers in the Kinloch and Ferguson-Florissant districts on the 1974-75 Berkeley salary schedule. It was assumed that some teachers on the Ferguson-Florissant salary schedule would be entitled to additional steps on the Berkeley salary schedule. This adjustment was made when placing the Ferguson-Florissant teachers on the Berkeley salary schedule. The budget amount for 1975-76 salaries also included an additional amount of $841,842 to permit the normal advancement of personnel on the Berkeley salary schedule for 1975-76. This amounted to an increase of 6.1%. An amount for salary adjustments for administrative and supervisory personnel was included in the budget projection. This amount was derived by increasing 1974-75 budgeted amounts by 6.1%. The projected expenditures for 1975-76 also included 6.1% over 1974-75 budgeted amounts for non-certificated personnel salaries to permit salary adjustments. The 1974-75 budgeted salaries for Ferguson-Florissant librarians were increased 10% to correspond to salary

adjustments for teaching personnel. No increase in funds for substitute teacher services was projected.

9. Instruction-Other Expenses—5% increase over 1974-75 budget based on a combination of inflation and declining ADA in 1975-76.

10. Instruction, Supplies, 5% increase over 1974-75 budget based on a combination of inflation and declining ADA in 1975-76.

11. Attendance—6.1% increase over 1974-75 budget to correspond with cost of advancing teaching personnel on the Berkeley salary schedule for 1974-75 to 1975-76. Enlarged district may wish to place more emphasis on these services.

12. Health Services—6.1% increase over 1974-75 budget to correspond with cost of advancing teaching personnel on the Berkeley salary schedule from 1974-75 to 1975-76.

13. Pupil Transportation—It has been stipulated that 9,396 pupils, based on September 1974 data, would require transportation services in the merged district. With enrollment in the combined districts declining at approximately 4.5% annually (see stipulation no. 4) it is assumed that a similar decrease in the number of pupils to be transported in 1975-76 can be expected. It is estimated that 84% of the pupils (8,973) will ride each day for an ADT of 7,537. Cost per ADT was projected to be $60 for the year. An 8% increase was included to provide an amount for salary adjustments and increased costs.

14. Operation of Plant—8% increase above 1974-75 budgets for salary adjustments and inflationary costs after deducting $20,000 for decreased operational

costs due to closing of Smith, Dunbar, Kennedy Junior High School, and Kinloch High School. All present personnel maintained in merged district.

15. Maintenance of Plant—8% increase above 1974-75 budgets for salary adjustments and inflationary costs after deducting $9,125 for decreased maintenance costs due to closing of Smith, Dunbar, Kennedy Junior High School, and Kinloch High School. All present personnel maintained in merged district.
16. Fixed Charges—1974-75 budgeted amount increased by 8% of increased salaries for 1975-76. A 2% increase over 1974-75 budgets for fringe benefit adjustments.
17. Food Services—No change. Declining ADA.
18. Student Body Activities—No change. Declining ADA.
19. Community Services—No change.
20. Capital Outlay—Increased $65,000 for purchase of five additional buses.
21. Debt Services—Actual requirements for 1975-76 as reported by the three school districts.

Note: It is believed that an additional $300,000 or more in Federal funds, under Title VII of the Emergency School Aid Act and Title IV of the Civil Rights Act of 1964, would be available, upon application, to the new district for workshops and/or in-service training as suggested throughout the plan.

Considerations for Arriving at a Tax Rate for the Proposed District

The budget projection for 1975-76, as shown in Table VIII, was based on the utilization of Ferguson-Florissant's current tax levy of $5.38 per one hundred dollars assessed valuation in the

proposed district. This seemed to be appropriate in view of the Court's directive of October 4, 1974, relative to the annexation of Kinloch and Berkeley to Ferguson-Florissant and the provisions of Article X, Section 3, of the Missouri Constitution concerning a uniform levy in a taxing unit. As indicated in Part 1, page 7, it has been assumed through the years that the receiving district's tax rate should be applied to all annexed territory. However, substantial doubt was cast on this assumption by the Appellate Court Decision, Jackson County District, in *State of Missouri ex rel. Ft. Osage School District v. Bernice Conley*. If the annexation envisioned in the Court Order of October 4, 1974, becomes effective "prior to April 1, 1975," under the reasoning of the Appellate Court Decision cited, three different tax levies would prevail within the enlarged district at least for the first year and perhaps until a uniform levy is established by the voters. In this event, the Local Receipts item in Table VIII for 1975-76 would be projected at $16,845,739, a decrease of $1,807,396.

It is recommended that the Court authorize and empower the Board of Education to set a uniform levy for the new district, following a determination by the board of the local tax revenue necessary to provide the quality of educational programs and services desired on a desegregated basis for all pupils, but not to exceed $5.38 per one hundred dollars assessed valuation. (See Section 11(c) of Article X, Missouri Constitution.)

PART III

Pupil Assignment

As of September, 1974, the three districts of Kinloch, Berkeley, and Ferguson-Florissant had 34 schools in operation: 25 of these were elementary schools, 5 were junior high schools, and 4 were senior high schools. With two or three minor exceptions, the grade organizational pattern of K-6, 7-9, and 10-12 prevailed.

Combined Enrollment Figures by Levels (1974)

Enrollment at the different grade levels in September, 1974, was as follows:

	No. of Schools	W	NW[a]	Total	Est. Capac.[b]	% NW
(K-6)						
Kinloch	(2)	0	547	547	900	100.0
Berkeley	(6)	1,134	1,020	2,154	3,630	47.4
Ferguson	(17)	7,096	435	7,531	9,660	5.6
(7-9)						
Kinloch	(1)	0	256	256	200	100.0
Berkeley	(1)	683	404	1,087	1,428	37.2
Ferguson	(3)	4,273	187	4,460	4,450	4.2
(10-12)						
Kinloch	(1)	0	176	176	340	100.0
Berkeley	(1)	702	300	1,002	1,296	29.9
Ferguson	(2)	4,410	155	4,565	4,800	3.4
All Districts						
K-6	(25)	8,230	2,002	10,232	14,190	19.6
7-9	(5)	4,956	847	5,803	6,078	14.6
10-12	(4)	5,112	631	5,743	6,436	11.0
Total	(34)	18,298	3,480	21,778	26,524	16.0

[a] NW includes pupils designated as "Black" and "Other." There were 64 "others" at the elementary level, 30 at the junior high level, and 15 at the senior high level.

[b] Capacity figures based on 30 pupils per classroom at the elementary level, 28 pupils per classroom at the junior high level, and 24 pupils per classroom at the senior high level. These are standard capacity figures used by Missouri Department of Education and the U. S. Office of Education.

* * * * * * *

Projected Summary Results of Changes Recommended

School	% NW Before Change	Est. % NW After Change
Kinloch	100.0	39.2
Dunbar	100.0	closed
Bermuda	11.0	11.0
Central	8.6	8.6
Combs	.8	18.6
Commons Lane	3.2	13.0
Cool Valley	21.8	21.8
DeSmet	3.9	3.9
Duchesne	3.0	29.8
Graham	1.9	15.1
Griffith	3.8	3.8
Halls Ferry	6.7	6.7
Lee Hamilton	8.2	31.8
Mark Twain	4.7	4.7
Parker Road	2.7	11.9
Robinwood	2.4	12.7
Vogt	4.1	4.1
Walnut Grove	5.5	27.4
Wedgwood	3.9	3.9
Airport	49.1	49.1
Caroline	35.1	45.2
Frostfield	70.5	26.3
Holman	9.1	44.0
Smith	100.0	closed
Springdale	21.5	48.3
Kennedy	100.0	closed
Cross Keys	4.2	8.9

School	% NW Before Change	Est. % NW After Change
Ferguson	7.7	7.7
Florissant	.9	6.5
Berkeley	37.2	41.7
Kinloch	100.0	closed
McCluer	5.0	5.0
McCluer North	1.7	8.8
Berkeley	29.9	29.9

Flexibility in Pupil Assignment

The board of education for an enlarged district of this type will need some flexibility to meet changing conditions. For instance, the figures used in this plan are the September, 1974, enrollments which will be different in the fall of 1975 and thereafter.

* * * * * * * *

PART VI

Pupil Transportation

Approximately sixty percent of the public school pupils in Missouri are transported to and from school daily. The Ferguson-Florissant and Berkeley districts are currently operating extensive pupil transportation programs. Kinloch provides no regular transportation service due to the small size of the district and the relatively short distances the pupils reside from their school attendance centers.

Relevant data for the 1973-74 school year, pertaining to pupil transportation in the districts involved, are set out below.

	No. Buses School-Owned	No. Pupils Transported	Total Cost	State Reimbursement	A.D.T.* Pupils	Per Pupil Cost (A.D.T.)
Berkeley	16	1,569	$103,977	$ 44,882	1,290	$80.62
Ferg.-Flor.	55	6,298	266,623	178,799	5,109	52.19
Totals	71	7,867	$370,600	$223,681	6,399	$57.92

* Average Daily Transported.

Number of Buses and Pupils Transported, Fall 1974**

	Buses		Pupils Transported			
	No.	Capacity	Sr. High	Jr. High	Elem.	Total
Kinloch	1	48	0	0	0	0
Berkeley	16	1,270	982	525	110	11,617
Ferg.-Flor.	47	2,885	2,338	2,805	606	5,749
Combined	64*	4,203	3,320	3,330	716	7,366

* Ferguson-Florissant and Berkeley have 10 additional buses for use on a standby basis.

** As reported by the component districts October 16, 1974.

Note: Ferguson-Florissant and Berkeley have a combined total of 154 bus routes or an average of 2.44 runs per bus.

Additional Pupils Transported

It is estimated that a maximum of 1,508 additional students would require transportation services under the proposed desegregation plan: 176 senior high, 170 junior high, and 1,162 elementary pupils. Based on fall, 1974, pupil data, this would increase the percentage of pupils to be provided transportation in the enlarged district from 33.8% (7,366 ÷ 21,778) to 40.7% (8,874 ÷ 21,778) which is still about 20% below the state average.

Approximately 116 pupils per bus are being transported daily in 1974-75 (with an average of 2.4 runs or routes per bus); the

additional pupils to be transported by this plan, if the standby buses were utilized, would raise the daily total to about 120 per bus.

As a result of the declining enrollment in the enlarged district (see Table III, [p. 80]) and by careful routing, pick-up procedures, and continued staggering of schedules for school hours, very few, if any, additional buses will be required for transporting the reassigned pupils next year. Provision is made in the projected budget (Table VIII, [p. 83]) for three additional buses if it is determined they are needed.

Time and Distance Factors

It should be noted that the distances pupils would be transported under the plan would all be less than six miles with most runs averaging a good deal less. In no way would the pupils' health or educational well-being be likely to suffer as a result of the times and distances involved.

Board Policy

The transportation system, including bus routes, the assignment and training of drivers, and the assignment of pupils to buses and within buses, shall be designed to insure the transportation of all eligible pupils on a nonsegregated and otherwise nondiscriminatory basis. Any technical assistance needed outside of the capabilities of the local district to achieve these ends should be provided by the State Department of Education.

In-Service Training

All transportation personnel shall participate in training programs, focusing attention on human and intergroup relations, multicultural understanding, and discussion of problems incident to the desegregation process. Program costs should be assumed by federal monies so far as possible. The General Assistance Center at the University of Missouri is prepared to develop such programs.

May 2, 1974

A PLAN

For Desegregating the Kinloch School System by the Annexation of the Kinloch School District to the Ferguson-Florrisant School District

Re: United States v. State of Missouri, et al.
No. 71 C 555 (1)

INTRODUCTION

The United States District Court, Eastern District of Missouri, issued the following Order, in part, on April 12, 1974:

> "1. The State Board of Education will make a detailed plan envisioning the annexation of Kinloch by Ferguson-Florissant District, and show exactly how this will work without the expenditures of any money for improving buildings and using the current tax rate of Ferguson-Florissant." . . .

In compliance with this Order, the State Board of Education respectfully submits the information set out herein for the Court's consideration.

The requested Plan is divided into the following components:

Part I — Organizational Structure

Part II — Governance and Financing

Part III — Pupil Assignments

Part IV — Faculty and Staff Assignments

Part V — Pupil Transportation

Part VI — Curriculum, Educational Services, and Extracurricular Activities

Part I

ORGANIZATIONAL STRUCTURE

The Court Order of April 12, 1974, directs consideration of "the annexation of Kinloch by Ferguson-Florissant District" as a possible remedy for the discrimination found by the Court in Case No. 71 C 555 (1). Annexation is one procedure established by the Missouri General Assembly for the merging of school districts into one administrative unit. See Section 162.441 RSMo 1969.

Section 162.441 RSMo provides that from the date of annexation the boundary lines of the receiving school district shall be changed to include the annexed district and that all property and money of the annexed district shall immediately pass into the possession of the board of education in the receiving district.

Assuming the merger of the Kinloch and Ferguson-Florissant Districts by the annexation of Kinloch to Ferguson-Florissant, the *enlarged* Ferguson-Florissant District (hereafter referred to as the Ferguson-Florissant-Kinloch District) would have the following relevant characteristics:*

* Source: As reported by the Kinloch and Ferguson-Florissant School Districts, September, 1973.

1. An area of approximately 17 square miles.
2. An assessed valuation of $182,567,930 million.
3. A population of 69,395, of which 89.8 percent are white (62,285) and 10.2 percent are nonwhite (7,110).**
4. A pupil enrollment of 18,381, of which 90.5 percent are white (16,639) and 9.5 percent are nonwhite (1,742).
5. A professional staff of 986 administrators and teachers, of which 91.5 percent are white (902) and 8.5 percent are nonwhite (84).
6. Noncertificated or support personnel totaling 470, of which 92.5 percent are white (434.5) and 7.5 percent are nonwhite (35.5).
7. Twenty-six schools in operation: 19 elementary schools; 4 junior high schools; and 3 senior high schools.
8. A total tax levy of $5.38 per one hundred dollars assessed valuation.
9. A total bonded indebtedness of $17,355,000.

* * * * * * *

** Source: 1970 Census Data.

TABLE VIII

Combined Receipts, Expenditures, and Budget Projections for Ferguson-Florissant-Kinloch District

	1971-72 Reported	1972-73 Reported	1973-74 Budget	1974-75 Budget Projection
Receipts				
Balance—Beginning of Year	$ 3,558,624.17	$ 3,818,423.02	$ 2,611,648.18	$ 2,547,758.54
Local Receipts	10,742,279.75	11,178,610.06	11,275,361.92	13,024,485.52
County Receipts	736,485.01	808,512.06	841,625.09	865,965.27
State Receipts	6,374,431.42	6,973,665.48	7,334,949.95	7,548,931.32
Federal Receipts	1,325,387.78	1,291,834.91	1,168,778.20	1,168,778.00
Total Revenue Receipts	$19,177,593.96	$20,252,622.51	$20,620,715.16	$22,608,160.11
Non-Revenue Receipts	2,912,049.41	14,678.75	42,600.20	36,101.71
Gross Receipts	$22,089,643.37	$20,267,301.26	$20,663,315.36	$22,644,261.82
Gross Receipts and Balance	$25,648,257.54	$24,085,724.28	$23,274,963.54	$25,192,020.36
Expenditures				
Administration				
Salaries	$ 352,762.26	$ 394,751.45	$ 426,432.00	$ 456,285.00
Other Expense	155,789.33	176,496.74	163,459.00	179,805.00
Instruction				
Salaries	10,824,142.49	11,557,466.63	11,406,394.00	12,318,906.00
Other (Except Supplies)	212,851.73	270,920.78	563,103.00	675,724.00
Supplies for Teaching	689,694.79	699,203.47	644,148.00	675,567.00
Attendance Services	884.40	—0—	—0—	5,000.00
Health Services	70,898.26	70,228.79	67,420.00	74,162.00
Pupil Transportation	2,298,107.74	262,749.39	346,600.00	412,910.00
Operation of Plant	1,339,264.97	1,554,920.79	1,321,720.00	1,414,240.00
Maintenance of Plant	709,956.13	596,243.86	991,880.00	1,000,000.00
Fixed Charges	1,078,040.14	1,171,338.54	1,261,003.00	1,538,909.00
Total Current Expend.	$15,664,095.24	$16,754,320.44	$17,192,159.00	$18,751,508.00
Food Services	1,049,295.40	1,092,454.01	1,141,215.00	1,300,000.00
Student Body Activities	239,790.13	268,865.27	228,000.00	319,200.00
Community Services	259,130.80	243,139.06	199,021.00	279,021.00
Capital Outlay	3,020,937.50	1,434,070.76	392,185.00	75,000.00
Debt Service	1,596,585.45	1,681,226.56	1,574,625.00	1,600,000.00
Gross Expenditures	$21,829,843.52	$21,474,076.10	$20,727,205.00	$22,324,729.00
Recapitulation				
Beginning Balance	$ 3,558,624.17	$ 3,818,423.02	$ 2,611,423.02	$ 2,547,758.54
Gross Receipts	22,089,643.37	20,267,301.26	20,663,315.36	22,644,261.82
Gross Receipts and Balance	25,648,257.54	24,085,724.28	23,274,963.54	25,192,020.36
Gross Expenditures	21,829,834.52	21,474,076.10	20,727,205.00	22,324,729.00
Ending Balance	$ 3,818,423.02	$ 2,611,648.18	$ 2,547,758.54	$ 2,867,291.36

Assessed Valuation of Merged District—1974-75—$188,044,968.00 (estimated)
Tax Levy Applied in 1974-75—$5.38 per $100 assessed valuation

* * * * * * *

Projected Summary Results of Changes Suggested

School	% NW Before Change	Est. % NW After Change
Kinloch	100.0	40.0
Dunbar	100.0	Closed
Bermuda	4.6	4.6
Central	7.0	35.2
Combs	0.3	0.3
Commons Lane	2.0	2.0
Cool Valley	18.2	36.6
DeSmet	2.8	2.8
Duchesne	4.7	17.8
Graham	1.1	1.1
Griffith	2.4	2.4
Halls Ferry	5.7	5.7
Lee Hamilton	7.6	19.4
Mark Twain	1.2	1.2
Parker Road	2.8	2.8
Robinwood	0.9	0.9
Vogt	4.3	26.0
Walnut Grove	5.6	16.9
Wedgwood	2.8	2.8
Kennedy	100.0	Closed
Cross Keys	2.2	6.3
Ferguson	9.5	14.6
Florissant	0.5	5.6
Kinloch	100.0	Closed
McCluer	5.9	13.5*
McCluer North	1.2	8.5**

* * * * * * *

* If Kinloch Senior High students are assigned to McCluer.

** If Kinloch Senior High students are assigned to McCluer North.

PART V

Pupil Transportation

Approximately sixty percent of the public school pupils in Missouri are transported to and from school daily. The Ferguson-Florissant district is currently operating an extensive pupil transportation program. Kinloch provides no regular transportation service due to the small size of the district and the relatively short distances the pupils reside from their school attendance centers.

Some pertinent facts about Ferguson-Florissant's transportation program, based on 1972-73 data, are set out below.

	No. Buses School Owned	No. Pupils Transp.	Total Cost	State Reimbursement	A.D.T.* Pupils	Per Pupil Cost (A.D.T.)
Ferguson-Florissant	61	6,801	$279,782	$192,985	5,391	$51.90

* average daily transported.

Additional Pupils Transported

It is estimated that a maximum of 986 additional pupils would require transportation services if Kinloch should be annexed to the Ferguson-Florissant district; 190 senior high, 246 junior high, and 550 elementary pupils. It is assumed that one-third (⅓) of the elementary pupils to be transferred in the Kinloch, Central, and Cool Valley arrangement suggested in Part III, page 15, will reside within walking distance of their attendance center (school). With a declining enrollment of approximately 800 pupils per year in the Ferguson-Florissant-Kinloch district and with careful routing and perhaps staggered schedules for school hours, very few, if any, additional buses will be required for transporting the reassigned pupils. Provision is made in the projected budget for some additional transportation costs.

It may be observed here that the estimated number of pupils to be transported by this plan (7,787) represents 42 percent of the total enrollment of the combined districts.

* * * * * * *

THE KINLOCH BOARD OF EDUCATION'S PLAN For Desegregation of Its District by the Annexation of It to the School District of Berkeley

INTRODUCTION

On August 27, 1973, in Civil Case 71 C 555 (1), U.S.A. v. State of Missouri et al., the United States District Court of the Eastern District of Missouri ordered the Missouri State Board of Education and the St. Louis County Board of Education to prepare a plan which would "disestablish the racially dual system of school districts in St. Louis County and eliminate continuing effects of past discrimination against, and denial of equal educational opportunities to students in the Kinloch District." The Board of Education of Kinloch feels, at this time, the plan submitted was not the best plan for the students of Kinloch; neither were the other plans submitted by the Berkeley and Ferguson-Florissant School Districts.

The following plan for a Berkeley-Kinloch merger is submitted in compliance with a directive of the Court and it follows the same format used by the State Board of Education and the St. Louis County Board of Education in their plan for desegregation.

The following general guidelines were utilized in the development of this plan:

1. Provide for equitable treatment of majority and minority pupils, certificated personnel, and support staff in the desegregation process.
2. Maximize stability in terms of pupil assignments and minimize additional transportation for desegregation purposes.
3. Provide for equality of educational opportunities.
4. Assure administrative feasibility and adequate financing.
5. Arrange for appropriate governance of the unitary system.
6. Observe safety factors in respect to pupil transportation and building facilities.
7. Maintain the concept of neighborhood schools and community centers, where possible.
8. Utilize present classroom space and building facilities to best advantage.
9. Maintain the local board of education's autonomy in decision making and flexibility in administrative procedures to every extent possible.
10. Elimination of some of the effects of high taxes on the community of Kinloch because of discrimination over the years.

This recommended designation plan . . .

1. Shows the projected enrollment of students, by race, at the various schools in the proposed unitary system.
2. Provides for the desegregation of faculty, staff, transportation, and extracurricular activities.
3. Reduces the number of non-white pupils to less than fifty percent (50%) of the enrollment in almost all

the schools of the unitary system as in the state and county plan.

The Kinloch School District would like to go on record as supporting this proposal over the State and County Boards of Education's and those submitted by the Berkeley and Ferguson-Florissant School Districts for the following reasons:

1. *Burden of Integration*

   The burden of integrating the schools will not be placed almost solely on minority students as in a merger that would include Ferguson-Florissant. In almost all school desegregation cases, blacks and other minorities are the determining factor in whether a school is integrated or not. By Ferguson-Florissant having very, very few blacks, bussing would be placed heavily on the black community. A Berkeley-Kinloch merger will lessen this burden.

2. *Pupil Transportation*

   Pupil transportation will be cut to a minimum due to the size of the proposed district; most schools will be in walking distance. This puts more emphasis on quality education rather than bussing. With the cost of gasoline and the inability to raise taxes, a Berkeley-Kinloch merger seems more logical.

3. *Finance*

   In the Kinloch-Berkeley merger the tax rate would be raised only a small amount for Berkeley and be lowered for Kinloch. Both districts would be better off than they would be in a merger with Ferguson-Florissant.

   A merger as described above would also provide a greater opportunity to get additional money from local taxes because the tax rate would be still much lower

than surrounding districts. This would not be possible if Ferguson-Florissant was involved because the tax rate would be increased greatly.

A Berkeley-Kinloch merger would also give some relief to the residents of Kinloch.

4. *Location*

The schools in Berkeley and Kinloch are close together and the neighborhood concept could still be maintained to a certain extent. This plan would lend itself to better parent participation. Parents would be able to see about their children in most cases without worrying about transportation. To put poor and minority students in a large district where parents cannot get back and forth to the schools is putting undue hardship on them.

PART I

Organizational Structure

The area of the enlarged district would include all area presently in the Kinloch School District plus the area in the present Berkeley District. We feel that the laws that govern annexation wouldn't apply in this case since the two districts were formed and allowed to exist illegally. It is, therefore, recommended that the Kinloch District not lose all its identity when it is joined with Berkeley.

The recommended Kinloch-Berkeley District is approximately 12 square miles in area. It is located in the northern part of St. Louis County adjacent to the Lambert-St. Louis International Airport. Its total assessed valuation, for school taxing purposes, amounted to $115,601,176 for the 1972-73 school year. The proposed district enrolled 5,401 students in September,

1973, 54.09 percent white and 45.91 percent nonwhite. Based on the 1972-73 data, assessed valuation per pupil in average daily attendance amounted to $21,403 (see Table I). This compares favorable with the State average assessed valuation per pupil in ADA of $11,908 for the same year. More detailed information relative to pupils, staff, facilities, and financial resources of the recommended district will be reflected in other parts of this plan.

---

42 U.S.C. § 2000c-6.

(a) Whenever the Attorney General receives a complaint in writing—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, sex or national origin,

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for

such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

Persons unable to initiate and maintain legal proceedings

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

"Parent" and "complaint" defined

(c) The term "parent" as used in this section includes any person standing in loco parentis. A "complaint" as used in this section is a writing or document within the meaning of section 1001, Title 18.

Pub.L. 88-352, Title IV, § 407, July 2, 1964, 78 Stat. 248; Pub.L. 92-318, Title IX, § 906(a), June 23, 1972, 86 Stat. 375.

* * * * * * *

---

20 U.S.C. § 1751.

No provision of this Act shall be construed to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

Pub.L. 93-380, Title II, § 251, Aug. 21, 1974, 88 Stat. 519.

* * * * * * *

20 U.S.C. § 1752.

Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transportation of any student or students from any school attendance area prescribed by competent State or local authority for the purposes of achieving a balance among students with respect to race, sex, religion, or socioeconomic status, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired. This section shall expire at midnight on June 30, 1978.

Pub.L. 93-380, Title II, § 253, Aug. 21, 1974, 88 Stat. 519.

* * * * * * *

20 U.S.C. § 1753.

The rules of evidence required to prove that State or local authorities are practicing racial discrimination in assigning students to public schools shall be uniform throughout the United States.

Pub.L. 93-380, Title II, § 254, Aug. 21, 1974, 88 Stat. 520.

* * * * * * *

20 U.S.C. § 1754.

The proviso of section 2000c-6(a) of Title 42 providing in substance that no court or official of the United States shall be empowered to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards shall apply to all public school pupils and to every public school system, public school and public school board, as defined by title IV, under all circumstances and conditions and at all times in every State, district, territory, Commonwealth, or possession of the United States, regardless of whether the residence of such public school pupils or the principal offices of such public school system, public school or public school board is situated in the northern, eastern, western, or southern part of the United States.

Pub.L. 93-380, Title II, § 255, Aug. 21, 1974, 88 Stat. 520.

* * * * * * *

20 U.S.C. § 1755.

Notwithstanding any other provision of law, after June 30, 1974 no court of the United States shall order the implementation of any plan to remedy a finding of de jure segregation which involves the transportation of students, unless the court first finds that all alternative remedies are inadequate.

Pub.L. 93-380, Title II, § 256, Aug. 21, 1974, 88 Stat. 520.

* * * * * * *

20 U.S.C. § 1756. Remedies with respect to school district lines

In the formulation of remedies under this chapter the lines drawn by a State subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn, or maintained or crossed for the purpose, and had the effect of segregating children among public schools on the basis of race, color, sex, or national origin, or where it is established that, as a result of discriminatory actions within the school districts, the lines have had the effect of segregating children among public schools on the basis of race, color, sex, or national origin.

Pub.L. 93-380, Title II, § 257, Aug. 21, 1974, 88 Stat. 520.

* * * * * * *

20 U.S.C. § 1757.

(a) The Congress finds that—

(1) the forced transportation of elementary and secondary school students in implementation of the constitutional requirement for the desegregation of such schools is controversial and difficult under the best planning and administration; and

(2) the forced transportation of elementary and secondary school students after the commencement of an academic school year is educationally unsound and administratively inefficient.

Student transportation orders incidental to student transfers pursuant to school desegregation plans effective beginning with academic school year

(b) Notwithstanding any other provisions of law, no order of a court, department, or agency of the United States, requiring the transportation of any student incident to the transfer of that student from one elementary or secondary school to another such school in a local educational agency pursuant to a plan

requiring such transportation for the racial desegregation of any school in that agency, shall be effective until the beginning of an academic school year.

"Academic school year" defined

(c) For the purpose of this section, the term "academic school year" means, pursuant to regulations promulgated by the Commissioner, the customary beginning of classes for the school year at an elementary or secondary school of a local educational agency for a school year that occurs not more often than once in any twelve-month period.

Orders subject to provisions of section

(d) The provisions of this section apply to any order which was not implemented at the beginning of the 1974-1975 academic year.

Pub.L. 93-380, Title II, § 258, Aug. 21, 1974, 88 Stat. 520.

* * * * * * *

CONSTITUTION OF MISSOURI

* * * * * * *

Article X Section 11(a). Taxes may be levied by counties and other political subdivisions on all property subject to their taxing power, but the assessed valuation therefor in such other political subdivisions shall not exceed the assessed valuation of the same property for state and county purposes.

* * * * * * *

Section 11(b). Any tax imposed upon such property by municipalities, counties or school districts, for their respective purposes, shall not exceed the following annual rates:

For municipalities—one dollar on the hundred dollars assessed valuation;

For counties—thirty-five cents on the hundred dollars assessed valuation in counties having three hundred million dollars, or more, assessed valuation, and fifty cents on the hundred dollars assessed valuation in all other counties;

For school districts formed of cities and towns, including the school district of the city of St. Louis—one dollar and twenty-five cents on the hundred dollars assessed valuation;

For all other school districts—sixty-five cents on the hundred dollars assessed valuation.

* * * * * * *

Section 11(c). In all municipalities, counties and school districts the rates of taxation as herein limited may be increased for their respective purposes for not to exceed four years, when the rate and purpose of the increase are submitted to a vote and two-thirds of the qualified electors voting thereon shall vote therefor provided in school districts the rate of taxation as herein limited may be increased for school purposes so that the total levy shall not exceed three times the limit herein specified and not to exceed one year, when the rate period of levy and the purpose of the increase are submitted to a vote and a majority of the qualified electors voting thereon shall vote therefor; provided in school districts in cities of seventy-five thousand inhabitants or over the rate of taxation as herein limited may be increased for school purposes so that the total levy shall not exceed three times the limit herein specified and not to exceed two years, when the rate period of levy and the purpose

of the increase are submitted to a vote and a majority of the qualified electors voting thereon shall vote therefor; provided, that the rates herein fixed, and the amounts by which they may be increased, may be further limited by law; and provided further, that any county or other political subdivision, when authorized by law and within the limits fixed by law, may levy a rate of taxation on all property subject to its taxing powers in excess of the rates herein limited, for library, hospital, public health, recreation grounds and museum purposes.

* * * * * * *

MISSOURI REVISED STATUTES

SIX-DIRECTOR SCHOOL DISTRICTS

162.101. County board of education in first class counties—qualifications—election.—1. A county board of education, consisting of six members who shall be elected for terms of three years, is created in each first class county of Missouri. Two members shall be elected in 1964 and every three years thereafter, two members shall be elected in 1965 and every three years thereafter, and two members shall be elected in 1966 and every three years thereafter.

2. Each member shall be a citizen of the United States and of the state of Missouri, a resident householder and voter of the county, and shall be not less than twenty-four years of age. Not more than three members of the board shall reside in any county court district.

3. The members of the school boards of the various school districts of each county shall meet on the second Tuesday in April in each year at a place and at the hour designated by the county superintendent of schools of the county. Notice of the time and place of the meeting shall be given by the county superintendent to the persons entitled to attend the meeting, by mail, at least six days before the meeting. The meeting shall organize by the election of one of its members as chairman. The county superintendent of schools shall serve as secretary of the meeting.

4. The persons attending the meeting shall thereupon proceed to elect, by ballot, the members of the county board of education. Nominations shall be made from the floor and each office to be filled shall be voted upon separately. Election of each board member shall be by a majority of the votes cast and each member of every school board within the county is entitled to one vote.

* * * * * * *

162.111. County board of education in second, third and fourth class counties—qualifications, election.—1. There is created in each second, third and fourth class county in this state a county board of education whose members shall be elected by popular vote at the annual school election held on the first Tuesday in April in each year. Each member shall be a citizen of the United States and of the state of Missouri; a resident householder and voter of the county, and shall be not less than twenty-four years of age. Nominations for board members shall be filed with the secretary of the county board of education at least thirty days before the election. The county board of education shall prepare ballots and publish notice for such election in the same manner as for boards of education in school districts.

2. At the annual school election next following October 13, 1963, six members shall be elected whose terms shall be determined at the first meeting of the board subsequent to the election as follows: In each county court district the member receiving the highest number of votes shall serve for three years; the member receiving the next highest number of votes shall serve for two years, and the member receiving the least number of votes shall serve for one year. Thereafter each member shall

serve for three years. Not more than three members shall be elected from one county court district.

3. The cost of the election shall be charged to each component district of the county in the proportion that its assessed valuation bears to the assessed valuation of the entire county and shall be paid from the incidental fund.

* * * * * * *

162.161. Duties of county board of education.—The county board of education shall

(1) Make or cause to be made and kept current a comprehensive study of each school district of the county. The study shall include:

(a) The assessed tax valuation of each existing district:

(b) The number of pupils attending school, average daily attendance, and the population of all districts in the county;

(c) The location and conditions of school buildings and their accessibility to the pupils;

(d) The location and condition of roads, highways and natural barriers within the county;

(e) The high school facilities of the county;

(f) The conditions affecting the welfare of the teachers and pupils;

(g) Any other factors concerning adequate facilities for the pupils.

(2) From time to time submit to the state board of education specific plans for the reorganization of school districts of the county. Each plan shall be in writing and shall include charts, maps and statistical information necessary to document properly the plan for the proposed reorganized districts and to provide

a comparison of existing districts with proposed reorganized districts.

(3) Cooperate with boards of adjoining counties in the solution of common organization problems, and submit to the state board of education for final decision any and all organization questions on which the cooperating boards fail to agree.

(4) Approve the budget prepared by the county superintendent of schools in cooperation with the clerks of the boards of the districts under his supervision and approve the audit, made by the county superintendent, of the expenditures report prepared by the district clerk and submitted for the approval of the state board of education.

(5) Continue to advise with the county superintendent of schools, school patrons, and school officials on all matters pertaining to the improvement of the schools in the county.

(6) Designate some person to perform the duties imposed by law on the county superintendent of public schools during any vacancy in his office or in the event of his incapacity to perform his duties. The person designated during the vacancy or incapacity of the county superintendent shall have full power to perform the duties imposed upon him by the county board of education.

* * * * * * *

162.171. Reorganization plan may divide unreorganized districts—districts must be composed of contiguous territory.—In recommending prepared reorganization plans, the county board of education may divide all existing unreorganized districts and any reorganized district not offering an approved program of work through the twelfth grade if division is in the best interests of the children, and place any portion in any proposed district but each proposed district shall be composed of contiguous territory.

162.181. Reorganization, procedure.—Upon receipt of a plan for the reorganization of districts in any county, the state board of education shall examine the plan. The state board shall approve or disapprove the plan either in whole or in part. If the plan includes any proposed district with territory in more than one county, the state board shall designate the county containing that portion of the proposed district which has the highest assessed valuation as the county to which the district belongs. The secretary of the county board shall be notified of the state board's action within sixty days following receipt of the plan by the state board. If the state board finds that the reorganization plan is inadequate in whole or in part, it shall return the plan to the secretary of the county board with a full statement indicating the parts thereof it has approved and its reasons for finding the plan or any part inadequate. The county board has sixty days to review the rejected plan or parts thereof, make alterations, amendments and revisions as deemed advisable and return the revised plan or part to the state board for its action. If the revised plan or part is disapproved by the state board, the county board shall propose and submit its own plan or part to the voters within sixty days following receipt of disapproval of the revised plan or part. No enlarged district may be proposed or submitted without the approval of the state board unless the proposed district has a minimum of two hundred pupils in average daily attendance for the preceding year or is comprised of at least one hundred square miles of area. The plan or part shall be submitted to the qualified voters in the same manner as if the plan or part had been approved by the state board.

* * * * * * *

162.191. Election in the proposed district.—Within sixty days after receipt of approval by the state board of education of the reorganization plan or part thereof, the secretary of the county board of education shall call an election in each proposed six-director school district wholly within the county or which

has been designated by the state board of education as belonging to the county. The notices of the election shall be written or printed and signed by the president and secretary of the county board of education. The notices shall be posted in at least three public places within each school district affected by the proposal at least fifteen days before the election and shall also be published at least two times in at least one newspaper of general circulation in the county or counties affected by the proposed district, the first publication being not less than fifteen days before and the last publication being not less than seven days prior to the date of election. The county board of education shall select and designate the voting places in each proposed six-director school district and shall also select and appoint from residents of each proposed district three judges and two clerks of such elections for each polling place. The judges and clerks shall be sworn and the election otherwise shall be conducted in the same manner as elections for state and county officers. Each judge and each clerk shall receive compensation of five dollars per day. The county board of education shall supply ballots, polling books and all other material required in the election. The cost of election supplies and the compensation of election officials shall be charged to each component district embraced in the proposed district in proportion to the total assessed valuation and shall be paid from the incidental fund. All qualified voters resident in the proposed school district may cast their ballots for or against the proposal. The ballot shall be in the following form:

For the proposed six-director district ☐

Against the proposed six-director district ☐

Check with cross-mark (X) in the square desired.

The judges and clerks of the election shall certify to the secretary of the county board of education the total votes for and the total votes against the proposed six-director district. A majority affirmative vote of the total votes cast is required for adoption of

the proposed six-director district. If the plan is not adopted, no subsequent plan involving any part of the same area may be submitted sooner than one year following the date of the election at which the plan was defeated.

* * * * * * * *

162.201. Certification of election results.—Not later than three days after the election as provided for in section 162.191, the secretary of the county board of education shall certify to the state board of education the results of the election in each proposed six-director school district.

162.211. Six-director district—who may organize as.—A six-director school district may be established by the voters of

(1) Any common school district which contains a city or town;

(2) Any city or town which is divided by a school district boundary line and which is not located in a county of the first class;

(3) Any two or more adjacent six-director school districts without limitations as to size or enrollment; or

(4) Any common school district which has two hundred or more children of school age by the last enumeration or any two or more adjacent common school districts which together have an area of fifty square miles or have an enumeration of at least two hundred children of school age.

* * * * * * * *

162.221. Six-director district—procedure to organize by petition of voters.—1. When the voters of any one or more districts as authorized in section 162.211, except those districts desig-

nated in subdivision (3) thereof, desire to form a six-director district, a petition signed by at least ten percent in number of those voting for school board members in the last annual school election in each district or one hundred voters, whichever is the higher number, shall be filed with the state board of education. On receipt of the petition, a representative of the state department of education, designated by the commissioner of education, shall visit the districts and determine the exact boundaries of the proposed six-director district. In determining these boundaries, he shall so locate the boundary lines as will in his judgment form the best possible six-director district, having due regard also to the welfare of adjoining districts.

2. Within sixty days after the receipt of the petition, the commissioner of education shall call an election of the voters of the proposed district by posting three notices in public places in each district affected by the proposal, stating the time, place and purpose of the election together with a plat of the proposed district at least fifteen days before the election and shall also publish the notice two times in at least one newspaper in the county or counties, the first publication to be at least fifteen days before the last publication to be made not less than seven days before the election. The state commissioner shall file a copy of the petition and of the plat with the county clerk. The election shall be conducted in the manner provided in section 162.191.

* * * * * * * *

162.222. Consolidation of six-director districts, section 162.221 to halt.—On August 25, 1969, all proceedings in all six-director districts in the state to establish new six-director districts from two or more adjacent six-director districts under section 162.221 shall cease and each district shall retain the organization and boundaries which it has on August 25, 1969.

(L. 1969 S. B. 187)

* * * * * * * *

162.223. Consolidation of six-director districts—petition—hearing—findings—election.—1. When the voters in any two or more adjacent six-director districts without limitation as to size or enrollment desire to consolidate and form a new six-director district, a petition asking for a hearing upon the question of consolidation shall be filed with the state board of education; provided, however, that said petition shall be signed by ten percent of those in each district who voted for school directors at the last election in which such directors were elected, or one hundred voters, whichever is the higher number. Upon receipt of any such petition, the state board of education, through its section on district reorganization under section 161.152, RSMo, and through such other sources as it selects, shall investigate the educational needs of the area sought to be included and, if it determines that the filing of the petition was not frivolous and that there is a reasonable chance that a proposed consolidation will result in better education for the children in the district, within six months following receipt of the petition, shall schedule a hearing or hearings to be held at a convenient place or places within a proposed district.

2. At such hearing or hearings, the state board of education shall give opportunity to proponents and opponents of the proposed consolidation to offer statements, information and testimony relating to the advantages or disadvantages of the proposed consolidation. Oaths shall not be administered to those testifying.

3. Within ninety days after such hearing or hearings, the state board of education shall prepare in written form appropriate findings of fact supporting its determination:

(1) That the formation of the proposed district will not result in better education for the children to be affected, in which event no proposal for formation of a new six-director district shall be submitted to the voters; or

(2) That the formation of a new six-director district could result in better education, in which event a proposal to form such a district shall be submitted at the next annual school election to the voters of the districts to be affected. The proposal shall be in the following form:

[ ] For formation of the proposed six-director district

[ ] Against formation of the proposed six-director district

(Place cross-mark [X] in the square desired.)

The state board of education shall direct the boards of education or the board of directors of each affected district to cause the proposal to be included on the ballot to be submitted to the voters in each such district at said election, with notice thereof being published in the manner provided by law for publication of notices of election in each such school district. A plat of the proposed new six-director district shall be published and posted with the notices of election. The determination of the state board of education to call or not to call an election shall be conclusive; except that any interested party aggrieved by the findings of the board may, within thirty days after such determination, take an appeal to the circuit court of the circuit in which the aggrieved party resides to review and the court shall render its judgment and appropriate order in the cause.

4. The results of the voting on the proposal in each district affected shall be certified to the state commissioner of education by the secretary of each board of education of each district or by such other person or body charged with conducting such elections and, should the majority of the votes cast in the proposed district be in favor of the proposal, the state commissioner shall declare the new district formed as of July first following the election.

* * * * * * *

162.231. Failure to approve proposed district—effect.—If any proposed six-director district does not receive the required

majority affirmative vote, the school districts constituting the proposed new school district shall remain as they were prior to the election.

* * * * * * *

162.241. Election of directors in newly formed district.—Should a proposal to form a six-director district under section 162.223 receive the majority of the votes cast thereon at such election, the state board of education shall call an election within thirty days, at the polling places selected by such persons or body in the county or counties charged with conducting such elections, for the purpose of electing six directors for the new district. The election shall be conducted in the manner provided by sections 162.361 and 162.371. Should there be no body in such county in charge of elections, the county board of education shall perform the duties with respect to conducting the election as would be performed by such body, the cost of election being paid equally from the incidental funds of each existing district included within the proposed new district. Two directors shall be elected to serve from July first following such election until the next annual school election, two to serve from July first until the second annual school election and two to serve from July first until the third annual school election.

* * * * * * *

162.251. New district, officers elected when—funds how transferred—obligations assumed.—Should the proposal to form a six-director district in the manner provided in section 162.-223 receive the necessary favorable vote, the terms of office of all directors and officers of each of the school districts comprising the territory incorporated in the new six-director district shall cease on July first following the election, at which time such directors and officers shall deliver to the board of the newly formed school district all property, records, books and papers belonging to the component districts. On said date, all funds in the hands of the county or township treasurer to the

credit of the districts incorporated in the new six-director district shall be transferred to the credit of the treasurer of the six-director district. The treasurers of the former six-director districts on that July first shall turn over to the treasury of the new district all funds belonging to the former six-director districts and shall make settlement therefor as provided by section 165.101, RSMo. The new district shall faithfully perform all existing contracts and assume all legal obligations of the component districts.

* * * * * * *

162.261. District board of education—terms—vacancies.—The government and control of a six-director school district, other than an urban district, is vested in a board of education of six members, who hold their office for three years, except as provided in section 162.241, and until their successors are duly elected and qualified. Any vacancy occurring in the board shall be filled by the remaining members of the board; except that if there are more than two vacancies at any one time, the county superintendent of public schools, upon receiving written notice of the vacancies, shall fill the vacancies by appointment. The person appointed by either the board or the county superintendent shall hold office until the next annual election, when a director shall be elected for the unexpired term.

* * * * * * *

162.291. Directors—election—qualifications.—The voters of each six-director district other than urban districts shall, annually, on the first Tuesday of April, elect two directors who are citizens of the United States and resident taxpayers of the district, who have resided in this state for one year next preceding their election or appointment and who are at least thirty years of age.

* * * * * * *

162.301. Organization of board—quorum—duties of officers.—1. Within four days after the election of the first school board in each six-director district, other than an urban district, and within four days after each annual election, the board shall meet. The newly elected members shall qualify by taking the oath of office prescribed by article VII, section 11 of the constitution of Missouri.

2. The board shall organize by the election of a president and vice president, and the board shall, on or before the fifteenth day of July of each year, elect a secretary and a treasurer, who shall enter upon their respective duties on the fifteenth day of July. The secretary and treasurer may be or may not be members of the board. No compensation shall be granted to either the secretary or the treasurer until his report and settlement are made and filed or published as the law directs.

3. A majority of the board constitutes a quorum for the transaction of business, but no contract shall be let, teacher employed, bill approved or warrant ordered unless a majority of the whole board votes therefor. When there is an equal division of the whole board upon any question except the re-employment of a teacher, the county superintendent of schools, if requested by at least three members of the board, shall cast the deciding vote upon the question, and for the determination of the question shall be considered a member of the board.

4. The president and secretary, except as herein specified, shall perform the same duties and be subject to the same liabilities as the presidents and clerks of the boards of common school districts.

* * * * * * *

162.311. District name—corporate powers—seal of board.—1. The board of directors of a six-director district at its first meeting shall adopt and enter of record the name of the

district and shall notify the county board of education and the clerk of the county court of the name so adopted. The name adopted shall comply with any applicable regulations of the state board of education. The district may sue and be sued in the name adopted under this section and possesses the same corporate powers and is governed by the same laws as common school districts except as herein provided.

* * * * * * *

162.321. Change of district name—effect.—1. The board of education of any six-director district may change the name of the district by unanimous consent of the members of the board, the name to comply with any applicable regulations of the state board of education, after first giving notice of the change by publication in some newspaper published in the county in which the district is located. The notice shall be published once a week for at least three consecutive weeks. The first publication shall be made not less than three weeks prior to the date upon which the board proposes to make the change of name, and the last publication shall be made not more than seven days prior to that date. However, if a petition signed by twenty property owners residing within the district is filed with the board on or before the date specified in the notice protesting against the change of name then the proposed change of name shall be presented as a proposition at the next annual school election. If the proposition is assented to by a majority of the voters of the district voting on the proposition at the election, the board of education shall declare the change of name to be in effect.

2. The changing of the name of the school district under this section shall in no way change its classification or have any effect upon its contracts, indebtedness, existence, or other rights and liabilities.

* * * * * * *

162.331. Duties and liabilities of the board.—The board of education of any six-director school district shall, except as herein provided, perform the same duties and be subject to the same restrictions and liabilities as the boards of common school districts acting under the school laws of the state.

* * * * * * *

162.341. Annual election, when held.—The annual election in six-director districts, except urban districts, shall be held on the first Tuesday in April in each year between the hours of six o'clock a.m. and seven o'clock p.m., except that in cities and towns having a population of more than two thousand and not more than seventy-five thousand, other than cities and towns under special charter, the election may, at the option of the board, be held at the same hours and places as the election for municipal officers, with the judges and clerks of the municipal election serving as judges and clerks of the school election.

* * * * * * *

162.361. Registration laws, application—conduct of elections.—1. The registration laws applicable to general elections in cities having more than seventy-five thousand inhabitants, in counties which have more than seven hundred thousand inhabitants and in counties of the second class which contain a city or part of a city of more than four hundred thousand inhabitants, apply to all elections in six-director school districts within such cities or counties.

2. Except in counties governed by subsection 1, the board of education in every school district containing a city having not less than ten thousand nor more than fifty thousand inhabitants shall require that all school elections shall be conducted in accordance with the laws regulating the registration of voters and general elections within the city; and that qualified voters outside the corporate limits of the city, not required to register for general elections, shall sign an affidavit as to their residence within the school district. The school board shall furnish to all judges of school elections on the day of the election the following affidavit in printed form:

I, ..., hereby certify that I am a resident of the school district in which I am this day casting my ballot and that my address is .....

Signed .....

Dated .....

The above affidavit will be signed by the voter when he casts his ballot at the voting place and shall thereafter be filed by the judges of the election.

3. The county clerks or election commission or other office charged with the conduct of elections shall furnish to the judges of school elections the registration records as required hereunder in the same manner as provided in section 116.060, RSMo, or by the general election laws applicable to the several counties to which this section applies.

4. In any year in which a county superintendent of public schools is to be elected and registration of voters is not required in the district, the qualified voters of a six-director district which contains a city where registration of voters is required must vote in the ward or precinct of which they are residents, if the place of voting has been designated by the board of education.

* * * * * * *

162.371. Conduct of elections—ballots, secrecy provisions.—1. All elections in six-director districts shall be by ballot, except that the board may direct the use of voting machines in any or all precincts at an election when the machines are

available. Convenient polling places within the district shall be designated by the board for all elections. If there is more than one incorporated city or town within the school district, there shall be at least one polling place in each city or town. When a district includes any city, incorporated town or political subdivision which holds an election on the same day on which the school election is held, the county clerk, board of election commissioners or other official having authority over general elections in the city, town, political subdivision and school district shall designate one polling place for both the school district and the city, town or political subdivision election in each precinct or district within the city, town or political subdivision and shall designate the election officials in each precinct who shall conduct the election for all subdivisions involved. The board of education shall designate polling places for voters who reside outside the corporate limits of cities, towns or other political subdivisions which hold elections at the same time as school elections.

2. For each polling place designated by the board under subsection 1, the board shall appoint three judges and two clerks of election. The judges and clerks shall be sworn and the election otherwise conducted in the same manner as elections for state and county officers.

3. All propositions submitted at the annual election may be voted for upon one and the same ballot, and necessary poll books shall be made out and furnished by the secretary of the board; but when an election for another political subdivision is held at the same time and place as the school election, and paper ballots are used, the ballots for the school election shall be upon separate pieces of paper and deposited in a separate ballot box kept for that purpose.

4. Every ballot shall be numbered in numerical order in which received, and the election judges shall, in the presence of the voter, before any ballot is delivered to the voter, cover

or conceal securely the identifying number or numbers placed on the ballot by placing over the number or numbers, and pasting down, a black sticker, which sticker is to be two inches square with gummed edges extending three-eighths of an inch toward the center of the square, so as to conceal, but not destroy, the number or numbers placed thereon. The stickers shall be supplied to the election judges by the county clerk or board of election commissioners of each county or city, and no sticker shall be removed except by order of the circuit court. The ballot shall then be delivered to the voter and only the voter shall deposit his ballot in the ballot box. No ballot shall be placed in the ballot box unless the names or initials of the judges appear thereon as herein provided. All paper on which such ballots are printed shall be of sufficient weight so as to eliminate transparency and prevent any party being able to read and detect how a vote was cast.

5. The result of the election at each polling place shall be certified by the judges and clerks to the secretary of the board of education, who shall record the same, and, by order of the board, shall issue certificates of election to the persons entitled thereto; and the results of all other propositions submitted must be reported to the secretary of the board, and by him duly entered upon the district records.

* * * * * * * *

162.421. Extension of city limits extends school district boundaries, exceptions—annexation of remainder of district.— 1. Except districts containing a city or a part of a city having more than seventy-five thousand inhabitants and districts in counties of the first class, the extension of the limits of any city or town beyond the boundaries of a six-director school district in which it is included shall automatically extend the boundaries of that district to the same extent, effective on the first day of July next following the extension of the limits of

the city or town, and except in counties of the second class if the extension of the limits of the city or town includes territory contained in another six-director school district which maintains a high school, then the school district boundary lines shall not be enlarged to include territory in said six-director district by reason of the extension of the city or town limits.

2. Whenever, by reason of the extension of the limits of any city or town, a portion of the territory of any school district adjacent thereto is incorporated in a six-director district, the inhabitants of the remaining parts of the district have the right to be annexed to the six-director district. When such part of a school district desires to be so annexed, a special election or an election at a special meeting shall be held as provided in section 162.441, and if a majority of the votes cast favor annexation, the secretary shall certify the fact, with a copy of the record, to the board of the district and to the board of the six-director school district; whereupon the board of the six-director district shall meet and confirm the annexation by a proper resolution of record. When such part of a school district has no organization, any ten voters may call a meeting of the district and proceed as provided in section 162.441; and the secretary of the meeting shall certify, if the majority votes for annexation, to the board of directors of the six-director district, and the same action shall be taken as provided above.

* * * * * * *

162.431. Boundary change—procedure—arbitration—compensation of arbitrators.—1. When it is necessary to change the boundary lines between two six-director school districts or between a six-director school district and a common school district, ten percent of the voters in any district affected, as determined by the total vote cast for all candidates for election as members of the school board, divided by the

number of members of the school board elected at the last preceding election of such members, may petition the district board of directors in the district affected, regardless of county lines, for a change in boundaries. The secretaries of the district school boards shall give notice of an election on the desired change before the next annual or biennial election in the manner provided by section 162.061.

2. The voters shall decide the question by a majority vote of those who vote upon the proposition. If assent to the change is given by each of the various districts voting, each voting separately, the boundaries are changed from that date.

3. If one or more of the districts vote against the change, the matter may be appealed to the county board or boards concerned, in writing, within fifteen days of the election by any one of the districts affected. If all the districts affected are in one county, the county superintendent of schools shall appoint four disinterested resident taxpayers of the county, who, together with himself, constitute a board of arbitration. If the districts affected are in two counties, the presidents of the county boards of education concerned together with one member appointed by the state board of education not a resident of the counties affected constitutes a board of arbitration. If the districts affected are in three or more counties, the presidents of the county boards of education of the two counties containing the greatest area affected, together with one member appointed by the state board of education not a resident of the counties affected, constitute a board of arbitration.

4. The county superintendent, if all the districts affected are in one county, or the member appointed by the state board of education, if the districts affected are in more than one county, shall act as chairman and shall call a meeting of the board of arbitration in some convenient place within ten days after the board is selected. The board shall consider the ne-

cessity for the proposed changes and shall decide whether the boundaries shall be changed as requested in the petition or be left unchanged, which decision shall be final. The decision by the board of arbitration shall be rendered not more than thirty days after the matter is referred to the board. The chairman of the board of arbitration shall transmit the decision to the clerk of each district affected who shall enter the same upon the records of his district and the boundaries shall thereafter be in accordance with the decision of the board of arbitration. The members of the board of arbitration shall be allowed a fee of fifteen dollars each, to be paid by the district taking the appeal at the time the appeal is made.

* * * * * * *

162.441. Annexation to adjoining six-director district—procedure—annexation to non-adjoining district, when allowed.—1. If any common school district or six-director district which adjoins a six-director district, including urban districts, desires to be attached thereto for school purposes, upon the receipt of a petition setting forth such fact, signed either by ten voters of the district or by a majority of the voters of the district, whichever is the lesser, the school board of the district desiring to be so attached shall order a special meeting or special election for the purpose of voting on the proposal, giving notice as required by section 162.061; except that in districts wholly, or partially, within cities having three hundred thousand to seven hundred thousand inhabitants, the petition seeking attachment to an adjoining district, or to any high school district in the county as hereinafter in this section provided, for school purposes shall be signed by at least ten percent of the registered voters of the district.

2. The voting shall be by ballot at the special school meeting in the case of common school districts or at the special election as provided for in section 162.371 in the case of six-director school districts, and the ballots shall be

For annexation

and

Against annexation

3. If a majority of the votes cast favor annexation, the secretary shall certify the fact, with a copy of the record, to the board of the district and to the board of the district to which annexation is proposed; whereupon the board of the six-director district to which annexation is proposed shall meet to consider the advisability of receiving the district and if a majority of all the members of the board favor annexation, the boundary lines of the six-director school district from that date shall be changed to include the district, and the board shall immediately notify the clerk of the district which has been annexed of its action.

4. Upon annexation, all property and money on hand belonging thereto shall immediately pass into the possession of the board of the six-director school district.

5. If a majority of the votes cast are against annexation, no other election on the proposal shall be called within two years after the election.

6. Any school district may annex to any high school district in the county in the manner provided by this section if, prior to the time the proposition is submitted to the voters of the district, the annexation is approved in writing by the state board of education.

* * * * * * *

162.451. Dissolution of district.—Upon petition of at least one hundred resident voters and taxpayers of the district, filed with the board, the proposition of dissolving a six-director district shall be submitted to a vote of the qualified electors at the annual school election and if two-thirds of the voters and

taxpayers present and voting thereon vote in favor of dissolution, the district shall be dissolved and the same territory included in the district may be reorganized as provided by law. Notice of the proposition to be submitted shall be given in the manner provided by section 162.061 prior to the annual school election so as to give the voters reasonable notice thereof and the election shall be conducted in all respects as provided in section 162.371.

* * * * * * * *

State Department of Education
Division of Public Schools
Jefferson Building
P.O. Box 480
Jefferson City, Missouri 65101

March 12, 1974

To: H. Kenneth Kirchner, Assistant Commissioner

From: John W. Alberty, Coordinator-Administration

Subject: The Effects Possible District Combinations May Have on State Aid in the Case of Kinloch, Berkeley, and Ferguson

The amounts of state funds per pupil in average daily attendance (ADA) apportioned to these three districts through the minimum guarantee portion[1] of the school foundation program for the 1973-74 school year are:

---

[1] Represents a major part of state financial assistance to public school districts and is based primarily upon an allowance per pupil in average daily attendance. See Sections 163.011 (1973) and 163.031 (1969).

Kinloch $569.20 per pupil in ADA

(State aid entitlement of $601,928 ÷ ADA of 1,057.50)

Berkeley $211.56 per pupil in ADA

(State aid entitlement of $878,649 ÷ ADA of 4,153.14)

Ferguson $360.99 per pupil in ADA

(State aid entitlement of $5,946,705 ÷ ADA of 16,473.23)

By combining the data items necessary for calculating state aid, such as assessed valuation, average daily attendance, numbers of AFDC pupils, et cetera, it is possible to compare the amounts shown above with amounts to which various combinations of these districts would have been entitled for the current school year.

(1) A combination of Kinloch and Ferguson would derive $373.55 per pupil in ADA.

(State aid entitlement of $6,548,632 ÷ ADA of 17,530.73)

(2) A combination of Kinloch and Berkeley would derive $246.09 per pupil in ADA.

(State aid entitlement of $1,282,273 ÷ ADA of 5,210.64)

(3) A combination of all three districts would derive $333.38 per pupil in ADA.

(State aid entitlement of $7,228,976 ÷ ADA of 21,683.87)

COUNTY EXHIBIT B

MINUTES

SAINT LOUIS COUNTY BOARD OF EDUCATION

Meeting No. 27 — October 31, 1949

Present	Absent
Louis Witzel, President	None
Robert T. Geggie	
Dr. H. T. Kemper	
J. N. Lindner	
Fred A. Gossom	
Lester C. Geil	

The St. Louis County Board of Education met upon call of the President on Monday, October 31, 1949, at 8:15 P.M. in the office of the County Superintendent of Schools, Clayton, Missouri.

The meeting was called to order by President Witzel at 8:25 P.M.

Item 1. Minutes

The minutes of the meeting of September 29, 1949 were read and approved as read.

Item 2. Canvass Election Returns

The Board then proceeded to canvass the returns of the Special School Election held October 29, 1949 for the purpose of voting upon the consolidation of various school districts, and the results, as certified to the Board, by the judges and clerks of the election were as follows:

Proposed District R-1

	Votes Cast For	Votes Cast Against
District No. 3—Vossenkemper School	8	300
District No 4— Pea Ridge	6	90
District No. 5—Columbia Bottoms	1	6
District No. 6—Larimore	9	357
District No. 7—Twillmann	4	536
District No. 8—Black Jack	4	324
Riverview Gardens—High School	329	31
Riverview Gardens—Moline School	321	3
Totals	682	1,647

Upon motion by Mr. Geil, seconded by Mr. Geggie, and unanimously agreed to, the proposal for the formation of District R-1 was declared lost.

Proposed District R-2

	Votes Cast For	Votes Cast Against
District No. 1—Brown School	1	68
District No. 2—Cold Water	3	146
District No. 9—Elm Grove	4	246
District No. 10—Hyatt	0	78
District No. 11—Rosary	16	98
District No. 17—Scudder	10	40
St. Ferdinand	47	187
Berkeley	375	25
Kinloch	178	75
Ferguson-Vogt School	167	153
Ferguson-Central School	117	131
Totals	918	1,247

Upon motion by Mr. Geil, seconded by Mr. Geggie, and unanimously agreed to, the proposal for the formation of District R-2 was declared lost.

Proposed District R-3

	Votes Cast For	Against
District No. 12—Garrett	23	38
District No. 13—Bonfils	5	75
District No. 14—Junction	0	74
District No. 15—Penn	11	36
Bridgeton	45	7
Maryland Heights	78	31
Pattonville	55	18
Totals	231	399

Upon motion by Mr. Geil, seconded by Mr. Geggie, and unanimously carried, the proposal for the formation of District R-3 was declared lost.

Proposed District R-4

	Votes Cast For	Against
District No. 29—Weber	43	89
District No. 30—Spoede	57	137
Olivette	295	4
Ladue	54	574
	449	804

Upon motion by Mr. Geil, seconded by Mr. Geggie, and unanimously carried, the proposal for the formation of District R-4 was declared lost.

Proposed District R-5

	Votes Cast For	Against
District No. 37—Oak Grove	34	30
District No. 42—Ballwin	12	180
District No. 43—Manchester	48	106
District No. 52—Barretts	62	34
District No. 53—Sulphur Springs	75	31
Fern Ridge District	16	795
Consolidated District No. 2	31	231
Valley Park—High School	208	22
Valley Park—Benton School	78	16
Totals	564	1,445

Upon motion by Mr. Geil, seconded by Mr. Geggie, and unanimously carried, the proposal for the formation of District R-5 was declared lost.

Proposed District R-6

(Note: For Information re Posting of Notices, et al., See Page 63-A.)

	Votes For	Cast Against
District No. 25—Bonhomme	15	32
District No. 26—Chesterfield	6	78
District No. 38—Oak Ridge	21	14
District No. 39—Orville	34	27
District No. 40—Wild Horse	37	2
District No. 41—Smith	27	25
District No. 54—Alt	14	35
District No. 56—Pond	59	7
District No. 57—Melrose	13	17
District No. 58—Hollow	28	3
District No. 59—Allenton	12	127
District No. 61—Horneker	0	29
District No. 62—Glencoe	14	20
District No. 63—Sherman	24	21
Ellisville	86	23
Eureka—High School	285	6
Eureka—Van Dover School	111	6
Totals	787	472

Upon motion by Mr. Gail, seconded by Mr. Geggie, and unanimously carried, the proposal for the formation of District R-6 was declared carried.

Proposed District R-7

	Votes For	Cast Against
District No. 45—Des Peres	80	133
Kirkwood District—Nipher Jr. High	31	0
Kirkwood District—John Pitman School	105	8
Kirkwood District—F. P. Tillman School	50	5
Kirkwood District—Henry Hough School	70	3
Kirkwood District—North Glendale School	60	4
Kirkwood District—W. W. Keysor School	74	21
Kirkwood District—Geo. R. Robinson School	47	2
Kirkwood District—Osage Hills School	35	0
Kirkwood District—J. Milton Turner School	34	6
Kirkwood District—Oakland Railroad Station	17	1
Totals	603	183

Upon motion by Mr. Geil, seconded by Mr. Geggie, and unanimously carried, the proposal for the formation of District R-7 was declared carried.

Proposed District R-8

(Note: For information re posting of notices see page 63-B.)

	Votes For	Cast Against
District No. 49—Sappington School	71	7
District No. 50—Grant School	139	138
District No. 67—Fenton School	209	7
District No. 68—Rott School	94	16
District of Concord	137	7
Totals	650	175

Upon motion by Mr. Geil, seconded by Mr. Geggie, and unanimously carried, the proposal for the formation of District R-8 was declared carried.

Proposed District R-9

	Votes Cast For	Against
District No. 75—Point School	35	206
Oakville District	21	406
Washington District	129	103
Mehlville District—Forder School	122	6
Mehlville District—St. John School	81	3
Totals	388	724

Upon motion by Mr. Geil, seconded by Mr. Geggie, and unanimously carried, the proposal for the formation of District R-9 was declared lost.

Item 3—Treasurer's Report

Treasurer, J. H. Lindner, reported that contributions from districts to the amount of $3,084.54 had been received to date. Contributions from Ladue District in the amount of $200.83 and Oak Ridge Dist. No. 38 in the amount of $31.29, have not yet been received.

Item No. 4—Bills

The following bills were submitted for payment:

Bill Dated Oct. 15, 1949 from St. Louis County Leader, amount	$ 109.70
Bill Dated Sept. 30, 1949 from The Standard Printing Co., amount	1,189.97
Bills from Watchman-Advocate, six dated Oct. 13, 1949; 9 dated October 14, 1949, totaling	227.75
Bill dated Oct. 31, 1949, Rufus G. Russell, amount	43.00
Total	$1,570.42

Dr. Kemper moved that these bills be approved and ordered paid. The motion was seconded by Mr. Lindner and unanimously carried.

Item 5—Pay Election Judges and Clerks

Dr. Kemper moved that the Treasurer be authorized to pay the salary of all judges and clerks serving in the special school election held October 29, 1949, for all those school districts from whom contributions are received. Motion seconded by Mr. Geil and unanimously carried.

Item 6—Set Date for Election of School Board Members

Dr. Kemper offered and moved the adoption of the following resolution:

Whereas the provisions of Section 10 of Senate Bill No. 307, an act of the Sixty-fourth General Assembly of the State of Mis-

souri, provides that the County Board of Education shall call an election for the purpose of electing school directors in newly reorganized districts, approved by resident, qualified voters of said newly-organized districts, under said Senate Bill No. 307,

Now, Therefore Be It Resolved, by the County Board of Education, within and for the County of St. Louis, Missouri, that an election be called and held in Reorganized District R-6, Reorganized District R-7 and Reorganized District R-8, on the 28th day of November, 1949, commencing at 7:00 o'clock A.M. and closing at 6:00 o'clock P.M., for the purpose of submitting to the qualified voters resident in each of said Reorganized District R-6, R-7 and R-8, an opportunity to vote upon the following proposition, towit:

To elect six school directors for said reorganized districts,

two to serve until the next annual school election,

two to serve until the second annual school election, and

two to serve until the third annual school election.

Be It Further Resolved, that the voting places for said elections shall be established in the school buildings within the respective re-organized districts, as follows:

(1) **Reorganized School District R-6.**

Chesterfield, District No. 26; Smith, District No. 41; Ellisville, Vandover and Eureka High School.

(2) **Reorganized School District R-7.**

DesPeres, District No. 45, and Kirkwood School District (1) Francis E. Nipher Junior High, (2) John Pitman, (3) F. P. Tillman, (4) Henry Hough, (5) North Glendale, (6) W. W. Keysor, (7) George R. Robinson, (8) Osage Hills, (9) J. Milton Turner Schools and (10) Oakland-Missouri-Pacific Railroad Station.

(3) **Reorganized School District R-8.**

Sappington, District No. 49, Grant, District No. 50, Fenton, District No. 67, Rott, District No. 68 and the District of Concord.

Be It Further Resolved, that the County Board of Education, at a subsequent meeting appoint residents of each of said Reorganized School Districts R-6, R-7 and R-8, to serve as Judges and Clerks at such election, at the respective polling places designated above.

Be It Further Resolved, that in the event any of the judges and clerks so selected by the County Board of Education is unable or unwilling to serve, substitute judges and clerks shall be designated from among the bystanders present.

Be It Further Resolved, that notices of such election shall be printed, signed by the President and the Secretary of the County Board of Education, and posted in at least three public places within each reorganized school district affected by the proposal, and said notices shall be in substantially the following form, towit:

NOTICE OF SPECIAL SCHOOL ELECTION
For Reorganized District R——

In accordance with the provisions of Section 10 of Senate Bills No. 307, an act of the Sixty-fourth General Assembly of the State of Missouri, and Section 1-483, Revised Statutes of Missouri, 1939, as amended, notice is hereby given the qualified voters of reorganized district No. R——, consisting of former school districts numbers ——, ——, of St. Louis County, Missouri, that a special election will be held in the school buildings, at ————————, in said reorganized District R——, on the 28th day of November, 1949, polls opening at 7:00 o'clock A.M.

and closing at 6:00 o'clock P.M., to vote upon the following proposition:

To elect six school directors for said reorganized school district,

two to serve until the next annual school election,

two to serve until the second annual school election, and

two to serve until the third annual school election.

Done by order of the St. Louis County Board of Education, this —— day of October, 1949.

Signed Louis Witzel
President, St. Louis County Board of Education

Signed Rufus G. Russell
Secretary, St. Louis County Board of Education

Be It Further Resolved, that the ballots, poll books, and all other materials required in the election shall be delivered to the polling places of each of the districts affected, in time for use at said election, the ballots to be in substantially the following form, to-wit:

Ballot

To Elect Directors for Reorganized School District R....
Instructions: Vote for six directors for the terms indicated by placing an "X" in the square before each name desired.
Choose Two Directors to serve until the next annual school election:

☐ .....
Name

☐ .....
Name

Chose two directors to serve until the second annual school election:

.....
Name

.....
Name

Chose two directors to serve until the third annual school election:

.....
Name

.....
Name

Be It Further Resolved that the cost of conducting such elections shall be charged to the respective districts R-6, R-7 and R-8, in proper proportion.

The motion was seconded by Mr. Geil and unanimously carried.

Item 7—Candidates file in writing

Mr. Geggie moved that any candidate, in order to have his or her name placed upon the official ballot prepared by the County Board of Education, must file their intention, in writing, with the County Board not later than noon on Monday, November 15, 1949, stating the term for which they are filing. The motion was seconded by Mr. Geil and unanimously carried.

Item 8—Alphabetical on ballot

Mr. Geil moved that the names of all candidates filing for school board directors in the respective reorganized districts, be placed on the ballot in alphabetical order. The motion seconded by Mr. Geggie and unanimously carried.

Item 9—Instructions to Secy.

Dr. Kemper moved that the Secretary of this Board be instructed and directed to—

(1) order all necessary supplies and printing necessary to conduct the election for school board directors in the reorganized District Nos. R-6, R-7 and R-8, to be held November 28, 1949, and

(2) send a letter to each of the former school district clerks within the three areas affected, asking them to post three notices of said election wthin their areas—said notices to be posted not later than Tuesday, November 15, 1949;

(3) the number of ballots to be ordered to be double the number of votes cast in the election for consolidation held on October 29, 1949;

(4) send a letter with the warrants to each judge and clerk, serving in the election on October 29, 1949 in the polling places wherein the election of November 28, 1949 will be held, asking them to serve again in the election of November 28, 1949.

The motion was seconded by Mr. Geggie and unanimously carried.

Item 10—Next Mtg.

The Board unanimously agreed to meet again, upon call of the President.

Item 11—Adjourn.

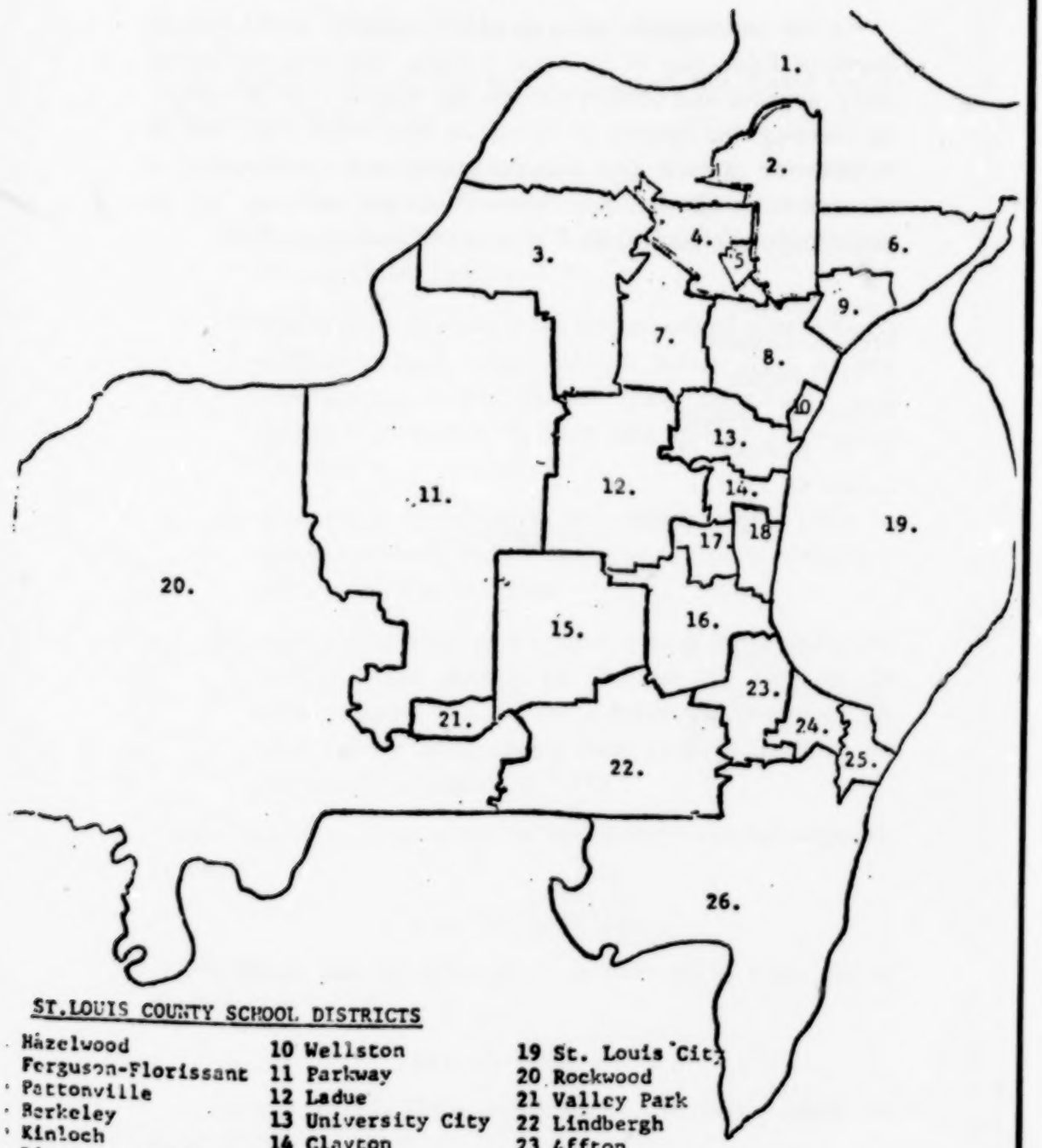
Upon motion duly made and seconded, the Board adjourned at 10:30 P.M.

Respectfully submitted

RUFUS G. RUSSELL
Secretary

We, the undersigned, being all of the members of the County Board of Education of St. Louis County, Missouri, do hereby ratify, approve and confirm all that has occurred at the foregoing meeting, the minutes of which we have heard read; and in signification of such approval, ratification and confirmation of our assent to all that has occurred at said meeting, we do hereby sign our names this 15th day of November, 1949.

Louis Wetzel
Fred A. Gossom
J. H. Lindner
Robert T. Geggie
H. T. Kemper
Lester C. Geil



ST. LOUIS COUNTY SCHOOL DISTRICTS

Hazelwood	10 Wellston	19 St. Louis City
Ferguson-Florissant	11 Parkway	20 Rockwood
Pattonville	12 Ladue	21 Valley Park
Berkeley	13 University City	22 Lindbergh
Kinloch	14 Clayton	23 Affton
Riverview Gardens	15 Kirkwood	24 Bayless
Ritenour	16 Webster Groves	25 Hancock Place
Normandy	17 Brentwood	26 Mehlville
Jennings	18 Maplewood-Richmond Heights	

BEST COPY AVAILABLE

Ferguson-Florissant

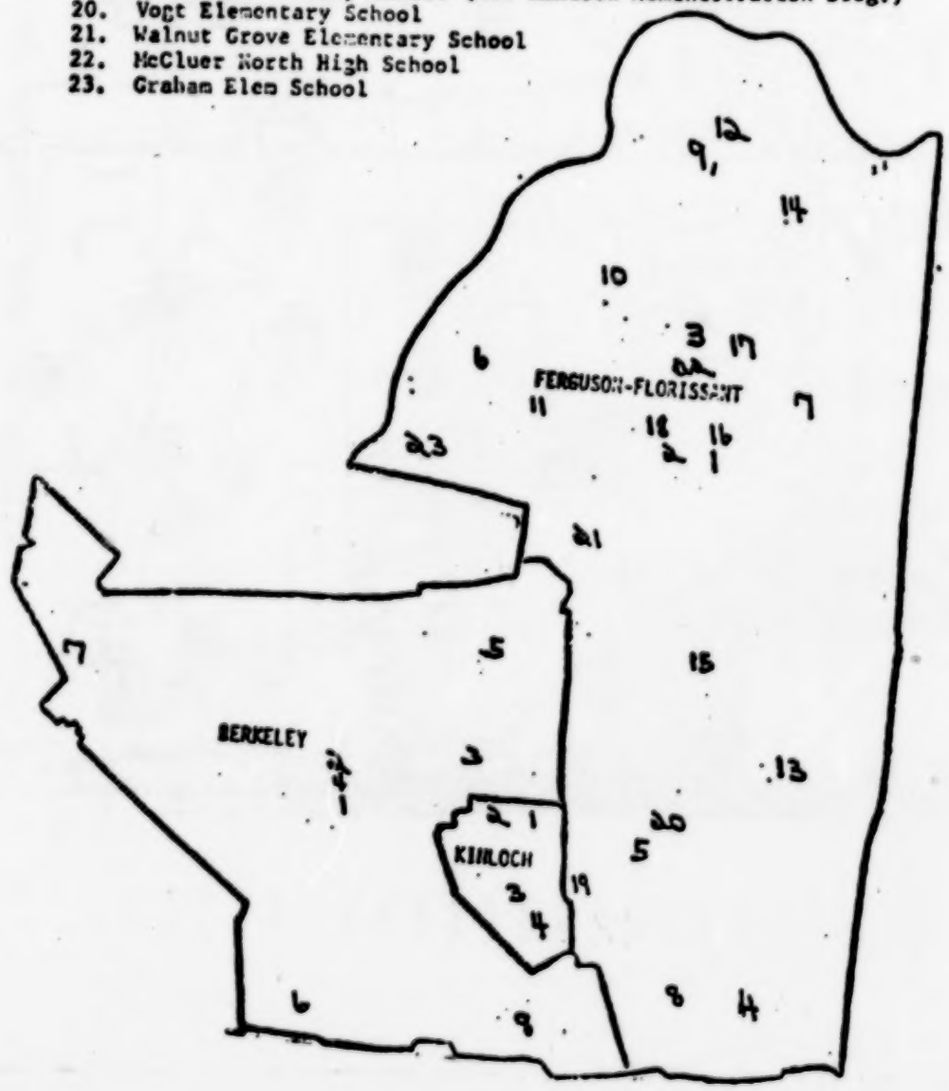
1. McCluer High School
2. Ferguson Junior High School
3. Florissant Junior High School
4. Bermuda Elementary School
5. Central Elementary School
6. Combs Elementary School
7. Commons Lane Elementary School
8. Cool Valley Elementary School
9. Cross Keys Junior High School
10. De Smet Elementary School
11. Duchesne Elementary School
12. Wedgewood Elementary School
13. Griffith Elementary School
14. Halls Ferry Elementary School
15. Hamilton Elementary School
16. Mark Twain Elementary School
17. Parker Road Elementary School
18. Robinwood Elementary School
19. Vernon Elementary School (now Kinloch Administration Bldg.)
20. Vogt Elementary School
21. Walnut Grove Elementary School
22. McCluer North High School
23. Graham Elem School

Berkeley

1. Berkeley High School
2. Berkeley Junior High School
3. Airport Elementary School
4. Caroline Elementary School
5. Frostfield Elementary School
6. Holman Elementary School
7. Smith Elementary School
8. Springdale Elementary School

Kinloch

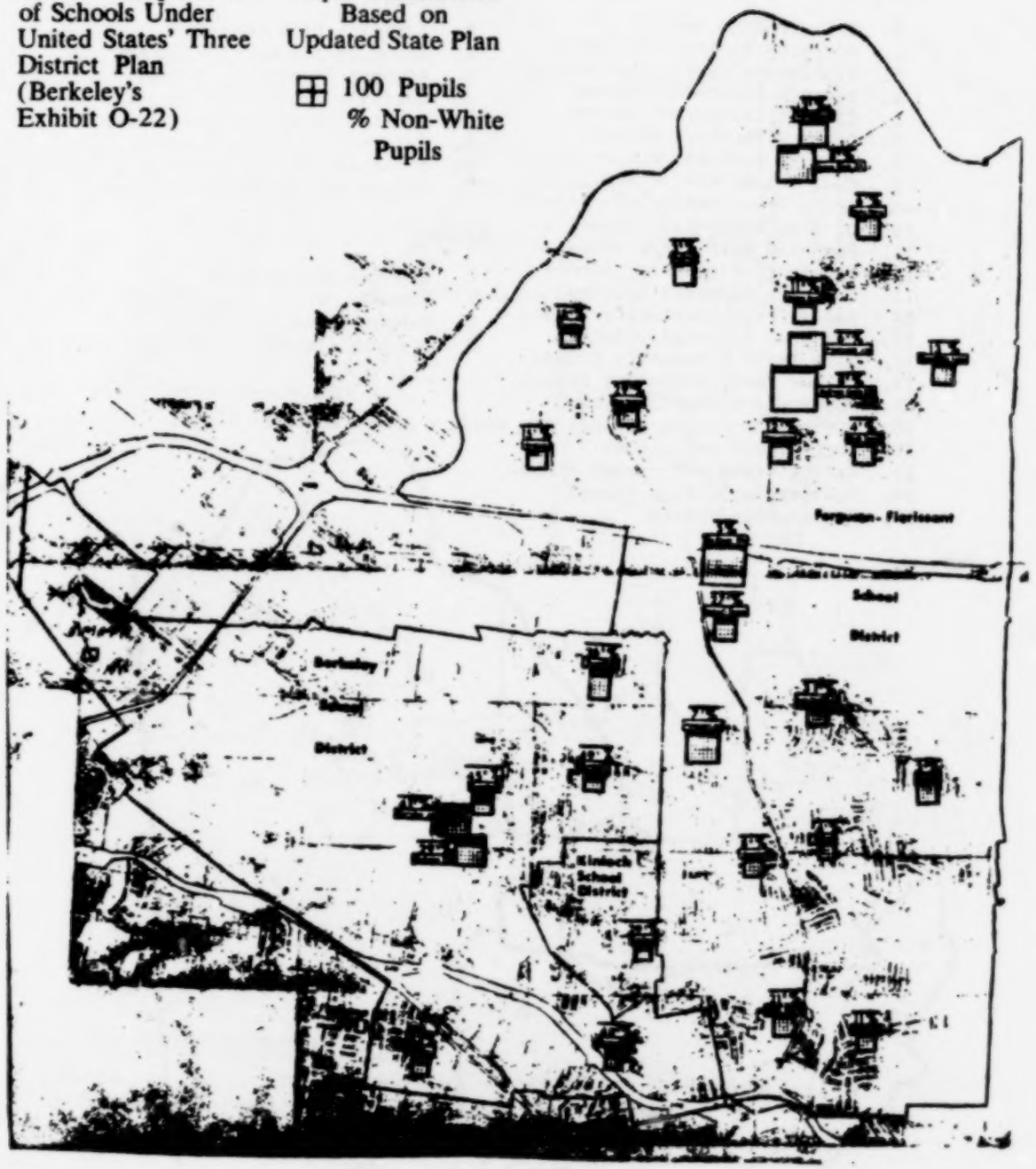
1. Kinloch High School
2. Kennedy Junior High School
3. Dunbar Elementary School
4. Kinloch Elementary School

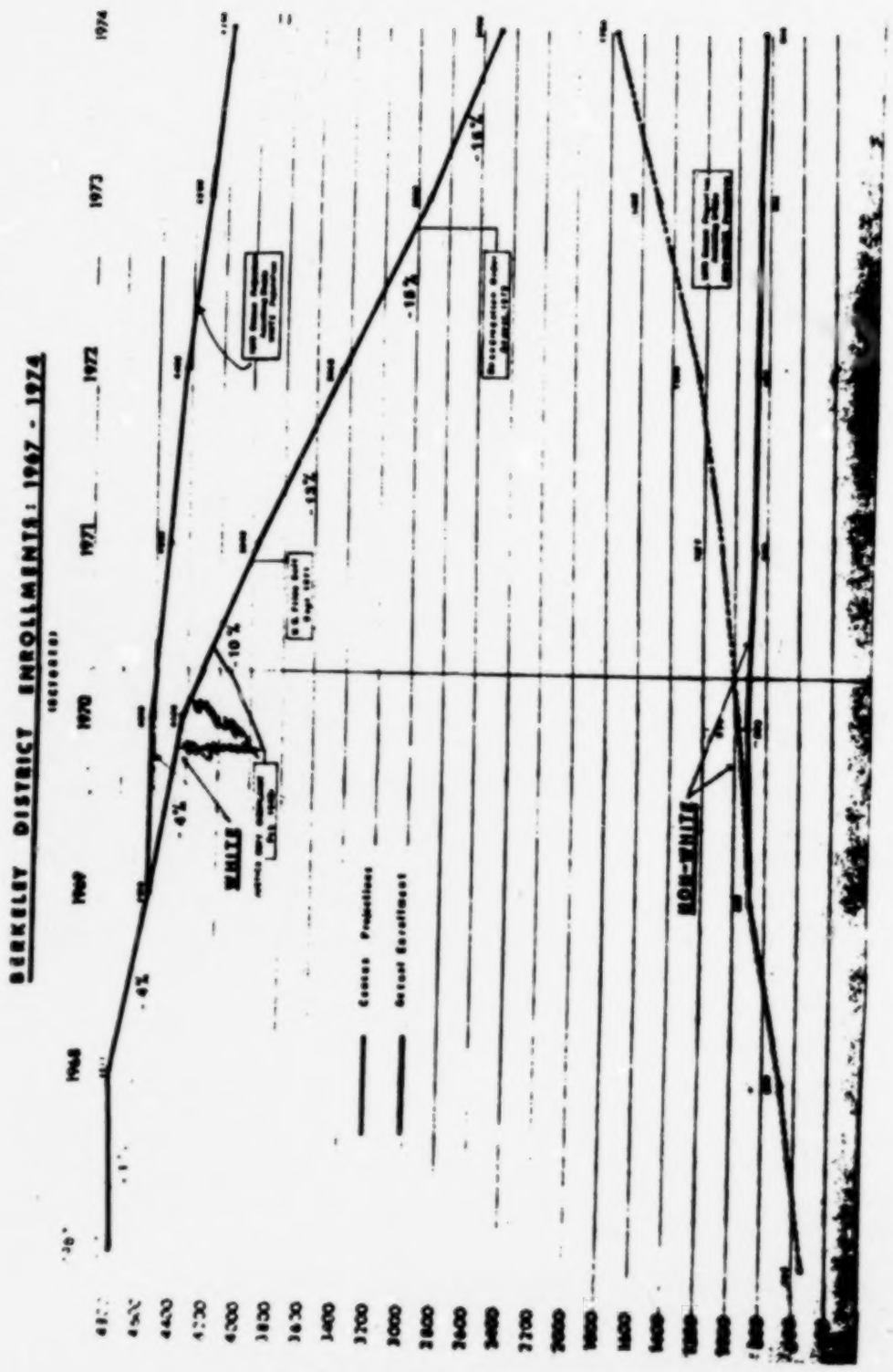


Racial Composition of Schools Under United States' Three District Plan (Berkeley's Exhibit O-22)

Pupil Distribution Based on Updated State Plan

⊞ 100 Pupils
% Non-White Pupils





BEST COPY AVAILABLE

Supreme Court, U. S.
FILED
OCT 17 1975
JR., CLERK

Nos. 75-202, 75-214, and 75-215

In the Supreme Court of the United States

OCTOBER TERM, 1975

FERGUSON REORGANIZED SCHOOL DISTRICT R-2, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

BERKELEY SCHOOL DISTRICT, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

KINLOCH SCHOOL DISTRICT, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,

J. STANLEY POTTINGER,
Assistant Attorney General,

MARIE E. KLIMESZ,
Attorney,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-202

FERGUSON REORGANIZED SCHOOL DISTRICT R-2, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

No. 75-214

BERKELEY SCHOOL DISTRICT, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

No. 75-215

KINLOCH SCHOOL DISTRICT, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-16)[1] is reported at 515 F.2d 1365. The opinion of the district court containing its initial findings of fact and conclusions of law (Pet. App. 16-35) is reported at 363 F. Supp. 739. The district court's findings of fact, conclusions of law, and judgment of January 9, 1975 (Pet. App. 36-44) are reported at 388 F. Supp. 1058.

JURISDICTION

The judgment of the court of appeals was entered on May 14, 1975. The petition for a writ of certiorari in No. 75-202 was filed on August 7, 1975. The petitions in Nos. 75-214 and 75-215 were filed on August 9, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court of appeals erred in approving the district court's order to implement an interdistrict desegregation plan, proposed and supported by the state and county boards of education, as a remedy for *de jure* segregation resulting from the State's intentional creation and maintenance of a small, all-black, financially impoverished, and educationally inadequate school district in a predominantly white area of St. Louis County.

[1] "Pet. App." refers to the Joint Appendix to the petitions for a writ of certiorari.

STATEMENT

The United States filed this school desegregation suit on September 3, 1971, pursuant to Section 407 of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6, and the Fourteenth Amendment, against the State of Missouri, the Missouri State Board of Education and its members, the Missouri State Commissioner of Education, the St. Louis County Board of Education and its members and Superintendent, and the three individual school districts of St. Louis County that are petitioners herein.[2] The complaint alleged that the state and county defendants had created and maintained the Kinloch School District as an all-black school district offering inferior educational opportunities and had failed and refused to take steps to provide equal educational opportunities to the black students of Kinloch, thereby denying them the equal protection of the law (Pet. App. 51-56).

After a hearing, the district court found that "the cumulative effect of the actions of the state and local defendants has been the creation, operation, support, and general supervision by the State of Missouri of a small school district which is unconstitutionally segregated and whose students are denied an equal educational opportunity" (Pet. App. 33). The court found that the state and county defendants have the authority to reorganize the school districts of Missouri and that they had excluded the Kinloch district

[2] The state and county defendants did not appeal from the decision of the district court.

from reorganization plans because of the race of its resident students. It ordered them "to develop and implement a plan which will 'achieve the greatest possible degree of actual desegregation, taking into account the practicalities of that situation.' *Davis* v. *Board of School Commissioners of Mobile County*, 402 U.S. [33] at 37, * * *; *Brown* v. *Board of Education*, 349 U.S. 294" (Pet. App. 32, 35).

The plan which the state and county defendants developed, and concerning which the district court received extensive evidence, is the subject of these petitions.[3] The district court found the Revised Plan to be "the least disruptive alternative which is educationally sound, administratively feasible, and which promises to achieve at least the minimum amount of desegregation that is constitutionally required" (Pet. App. 37). With minor modifications, the court of appeals upheld the plan and held that the district court had the authority to implement its order by directing that provision be made for the levying of taxes essential to operate the school district and by accepting the recommendations of the state and

[3] Although nine different plans were considered by the state and county defendants before recommendation of the three-district plan, only two of the others are supported by any of the parties. Both Ferguson and Kinloch prefer a plan that would merge Kinloch with Berkeley and that was rejected by the state and county defendants because it offered little chance for meaningful desegregation. Berkeley, on the other hand, supports the merger of Kinloch with Ferguson, a plan that was rejected principally because its chances for financial success would be questionable. (Pet. App. 11-12.)

county officials concerning the make-up and selection of members to serve on the governing board of the new district (Pet. App. 12, 14, 15).

ARGUMENT

1. Petitioners do not dispute the finding of the district court, as affirmed by the court of appeals, that the Kinloch School District was established and maintained by the State for racial reasons as an all-black school district offering markedly inferior educational opportunities. On the basis of that finding, the district court held that the State and its instrumentalities are constitutionally required to take affirmative, corrective action to eliminate the continuing vestiges of the dual system of schools in Missouri. *Brown* v. *Board of Education*, 347 U.S. 483; *Green* v. *School Board of New Kent County*, 391 U.S. 430; *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1. The plan proposed and supported by those defendants was adopted and approved by the courts below as educationally sound, administratively feasible, and effective in achieving desegregation. The remedy was well within the discretion of the district court, which followed well-established legal principles, and further review is not warranted.

2. Petitioner Berkeley argues that it should not be included in the remedy, either because its original separation from Kinloch in 1937 was lawful since it predated this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483, or because, during the

intervening period, it has changed from a 100 percent white to a 41 percent black school district. Berkeley argues that, were the old boundaries to be restored as if the 1937 split had not occurred, the old Kinloch school district would not be a unitary system today.[4]

But "[i]t would be sheer fantasy to say that the school districts in [St. Louis County] could be realigned today in the same manner that they were in [1937] and still comply with the constitutional mandate of *Brown I* and *II*. School district reorganization took place under the color of state law that then required segregated schools. Under these circumstances, when the resulting district lines drawn reflect a discriminatory pattern, *de jure* segregation is established." *Haney* v. *County Board of Education of Sevier County*, 410 F.2d 920, 924 (C.A. 8). Cf. *Wright* v. *Council of City of Emporia*, 407 U.S. 451; *United States* v. *Scotland Neck Board of Education*, 407 U.S. 484.

"As with any equity case, the nature of the violation determines the scope of the remedy." *Swann* v.

[4] Prior to 1937 the present Kinloch district and most of the present Berkeley district formed a single district with schools segregated by state law. The district court found that the "splitting of Kinloch No. 18 into two districts by the incorporation of the City of Berkeley and formation of the Berkeley district had the effect of creating a school district for white students, Berkeley, and another school district for black students, Kinloch. Thus, the existing dualism was made a part of the school district structure mandated by state law, and, consequently, more difficult for the local school officials to correct" (Pet. App. 20).

Board of Education, 402 U.S. 1, 16. The Berkeley district played a major role in the constitutional violation creating Kinloch as an all-black district, and the district court properly included it as part of the relief necessary to remedy that violation.

3. Petitioner Ferguson, relying on *Milliken* v. *Bradley*, 418 U.S. 717, argues that it is not properly included in the reorganization because it was not involved in the original creation of Kinloch as an all-black district.[5] At issue in *Milliken* was "the validity of a remedy mandating cross-district or interdistrict consolidation to remedy a condition of segregation found to exist in only one district" (418 U.S. at 744). There was no finding that the long-established school district lines of the 53 outlying districts in that case had been either created or maintained for reasons of race. The Court there held that a cross-district remedy could be implemented only if it were shown (*id.* at 745):

> that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation. Thus an interdistrict remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or

[5] Ferguson is supported in this argument by petitioner Kinloch, which believes that a remedy excluding Ferguson would be less burdensome on the black students and citizens of Kinloch. However, the evidence demonstrated that a Kinloch-Berkeley merger would be neither effective nor stable.

where district lines have been deliberately drawn on the basis of race.

The record in this case demonstrates the constitutional violation described by this Court in *Milliken*. The court of appeals concluded that "the district court's findings that Kinloch has been unlawfully maintained by each of the defendants, including Ferguson, for racially discriminatory reasons from 1937 to the present are not clearly erroneous" (Pet. App. 9).[6]

This case is similar to those cited by this Court in *Milliken* as examples of cases in which interdistrict remedies may be required because the school district lines conflict with the Fourteenth Amendment. *Haney* v. *County Board of Education of Sevier County*, 429 F.2d 364 (C.A. 8); *United States* v. *State of Texas*, 321 F. Supp. 1043 (E.D. Tex.), affirmed, 447 F.2d 441 (C.A. 5), certiorari denied, *sub nom. Edgar* v. *United States*, 404 U.S. 1016.[7]

---

[6] The district court found, for example (Pet. App. 25):

> On numerous occasions, the county and state defendants have proposed reorganization plans for the school districts in St. Louis County, but have not included Kinloch district in such plans because it was all-black and the officials believed that the voters of surrounding school districts would reject consolidation with Kinloch for that reason. On the one occasion when consolidation of Kinloch with the Berkeley and Ferguson districts was recommended, the reorganization proposal was defeated by referendum.

[7] Petitioners' remaining contentions do not require extended discussion. The court of appeals held that the district court had the authority to implement its desegregation order by making provisions for the levying of taxes to support the operation of the school district and for representation on the governing board of the reorganized district. See *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218, 232-234. The measures taken by the district court, as modified and affirmed by the court of appeals, were in accordance with state law as recommended by the state and county defendants. They do not raise any substantial federal question that warrants this Court's review.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

J. STANLEY POTTINGER,
Assistant Attorney General.

MARIE E. KLIMESZ,
Attorney.

OCTOBER 1975.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1975 595024 76

see

75

214

75

215